

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2464

By: Bass

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Sections 1104.2, as last amended by Section 4, Chapter 342, O.S.L. 1993, and 620.6 (10 O.S. Supp. 1993, Section 1104.2), which relate to juvenile criminal records; prohibiting the expungement of such records except under certain conditions; amending 51 O.S. 1991, Section 24A.8, which relates to the release of certain law enforcement records; prohibiting release of certain records under certain conditions; 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 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 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, 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 not be expunged and until such person attains the age of twenty-three (23) and has not been charged with an offense which would merit a criminal record or criminal juvenile record. After attaining the age of twenty-three and not having been charged with an offense which would merit a criminal record or criminal juvenile record, 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 10 O.S. 1991, Section 620.6, is amended to read as follows:

Section 620.6 A. The task force established pursuant to Section 620.2 of ~~Title 10 of the Oklahoma Statutes~~ this title, with the cooperation and assistance of the Serious and Habitual Juvenile Offender Program Implementation Task Force, shall prepare proposed guidelines and the form and content of proposed interagency

agreements for the inspection, release, disclosure, sealing and expungement of information contained in the records defined by Section ~~9~~ 1125 of this ~~act~~ title. Provided however, no such information shall be expunged until such person attains the age of twenty-three (23) and has not been charged with an offense which would merit a criminal record or criminal juvenile record. After attaining the age of twenty-three and not having been charged with an offense which would merit a criminal record or criminal juvenile record, any mention of the accused person shall be removed from public record.

Said guidelines shall:

1. Be in compliance with applicable state and federal laws providing for the confidentiality of records and information;
2. Provide for the inspection, release or disclosure of only the information necessary and appropriate, and only to the extent necessary, for the purpose for which such inspection, release or disclosure is made.

B. On or before July 1, 1993, the agencies listed in subsection A of Section 620.3 of ~~Title 10 of the Oklahoma Statutes~~ this title and the agencies comprising the juvenile justice system as defined by Section ~~2~~ 1160.2 of this ~~act~~ title shall, and the agencies comprising the children and youth service system as defined by Section 600 of ~~Title 10 of the Oklahoma Statutes~~ this title may:

1. Adopt rules, policies, procedures, standards, protocols and guidelines, as appropriate, for the inspection, release, disclosure, sealing and expungement of confidential records in accordance with the proposed guidelines prepared pursuant to subsection A of this section; and
2. Enter into contracts or interagency agreements under the Interlocal Cooperation Act for the sharing or disclosure of confidential information in accordance with said rules, policies, procedures, standards, protocols and guidelines.

SECTION 3. AMENDATORY 51 O.S. 1991, Section 24A.8, is amended to read as follows:

Section 24A.8 A. ~~Law~~ Unless prohibited pursuant to expungement provisions specified in Sections 1 and 2 of this act, law enforcement agencies shall make available for public inspection, if kept, the following records:

1. An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;

2. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;

3. Conviction information, including the name of any person convicted of a criminal offense;

4. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person;

5. A chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer and a brief summary of what occurred;

6. A crime summary, including a departmental summary of crimes reported and public calls for service by classification or nature and number;

7. Radio logs, including a chronological listing of the calls dispatched; and

8. Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of his commitment, the authority committing him, whether committed for a criminal offense, a description of his person, and the date or manner of his discharge or escape.

B. Except for the records listed in subsection A of this section and those made open by other state or local laws, law

enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial.

C. Nothing contained in this section imposes any new recordkeeping requirements. Law enforcement records shall be kept for as long as is now or may hereafter be specified by law. Absent a legal requirement for the keeping of a law enforcement record for a specific time period, law enforcement agencies shall maintain their records for so long as needed for administrative purposes.

D. Registration files maintained by the Department of Corrections pursuant to the provisions of the Sex Offenders Registration Act shall not be made available for public inspection.

SECTION 4. This act shall become effective September 1, 1994.

44-2-7556

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