STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1474 By: Cozort and Ferguson

AS INTRODUCED

An Act relating to juvenile justice; amending 10 O.S. 1991, Section 1104.2, as last amended by Section 32, Chapter 290, O.S.L. 1994 (10 O.S. Supp. 1994, Section 1104.2), which relates to reverse certification for certain offenses; providing that persons who commit certain offenses shall be considered adults, regardless of age; amending Section 12, Chapter 290, O.S.L. 1994 (10 O.S. Supp. 1994, Section 1507.9), which relates to regimented juvenile training; changing references to agencies responsible for program; 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 32, Chapter 290, O.S.L. 1994 (10 O.S. Supp. 1994, 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, sodomy, trafficking in illegal drugs, or manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense a controlled dangerous substance~~, or assault and battery with a deadly weapon,~~ shall be considered as an adult.

B. Any person ~~thirteen (13), fourteen (14) or fifteen (15) years~~ regardless of age who is charged with murder in the first degree, rape in the first degree, robbery with a dangerous weapon, shooting with intent to kill, assault and battery with a dangerous weapon, use of a firearm or other offensive weapon while committing a felony, or arson in the first degree shall be considered as an adult.

C. Upon the arrest and detention, such accused person 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.

D. 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.

E. 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.

F. 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.

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

SECTION 2. AMENDATORY Section 12, Chapter 290, O.S.L. 1994 (10 O.S. Supp. 1994, Section 1507.9), is amended to read as follows:

Section 1507.9 A. It is the intent of the Legislature that the program established pursuant to this section benefit the state by providing a two-phase regimented juvenile training program under which certain adjudicated juveniles are subject to a controlled and regimented environment that affirms dignity of self and respect for others; promotes the value of education, work, and self-discipline; and develops useful skills and abilities that can be applied when the juvenile is reintegrated into the community.

B. 1. The ~~Department of Human Services~~ Office of Juvenile Affairs through the ~~Office~~ Department of Juvenile Justice shall establish, maintain, and operate a regimented juvenile training program. Juveniles eligible for participation in the program shall be assessed and deemed appropriate for the program by the Department of ~~Human Services~~ Juvenile Justice. The juveniles eligible for the program shall include only juveniles adjudicated delinquent and placed in the custody of the ~~Department of Human Services~~ Office of Juvenile Affairs.

2. A juvenile may be eliminated from the program upon a determination by the ~~Office~~ Department of Juvenile Justice that a physical or mental condition will prevent full participation in the program by such offender.

C. The regimented juvenile training program shall consist of two phases, which shall be administered as follows:

1. Phase I: An intensive physical training and discipline phase in a secure facility, consisting of not more than thirty-two beds, or a nonsecure facility, for a period of not more than ninety (90) days and administered by the ~~Office~~ Department of Juvenile Justice. The ~~Office~~ Department may operate Phase I at ~~Department~~

facilities operated by the Office of Juvenile Affairs or contract for such services;

2. Phase II: A community reintegration phase for juveniles who have completed Phase I of the program, which is administered by the Office, as follows:

a. if appropriate juvenile diversion services are available, the Department of ~~Human Services~~ Juvenile Justice may contract for such services, and

b. if appropriate diversion services are not available, the juvenile shall be subject to a period of supervision under the ~~Office~~ Department of Juvenile Justice;

3. A juvenile in the regimented juvenile training program shall be required to participate in the reintegration phase for a period to be determined by the ~~Office~~ Department of Juvenile Justice;

4. In addition to the requirements set forth in this subsection, juveniles shall be required to participate in a job training and educational component, as deemed appropriate by the ~~Office~~ Department of Juvenile Justice. The educational component shall include classroom work comprised of basic academic and/or vocational instruction.

D. If a juvenile fails to progress through or complete the initial phase of the regimented juvenile training program, the ~~Office~~ Department of Juvenile Justice may reassign the juvenile to another appropriate facility. In addition, if a juvenile fails to progress through or complete the second phase of the program, the ~~Office~~ Department may return the juvenile to Phase I of the program for completion of all or part of the earlier phase; except that a juvenile shall not be returned for participation in the initial phase more than once.

E. The ~~Department of Human Services~~ Office of Juvenile Affairs shall establish standards, which shall be enforced by the ~~Office~~

Department of Juvenile Justice, for the regimented juvenile training program and each of the phases thereof described in this section. Supportive services deemed necessary by the ~~Office~~ Department shall be made available under the phases of the regimented juvenile training program, as deemed appropriate by the ~~Department~~ Office of Juvenile Affairs.

SECTION 3. This act shall become effective November 1, 1995.

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