

EHB 2419

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THE STATE SENATE
Thursday, March 25, 2004

ENGROSSED

House Bill No. 2419

ENGROSSED HOUSE BILL NO. 2419 - By: MCINTYRE of the House and WILKERSON of the Senate.

An Act relating to children; amending 10 O.S. 2001, Section 7303-4.3, which relates to certification proceedings; providing for the filing of juvenile proceedings within certain time; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7303-4.3, is amended to read as follows:

Section 7303-4.3 A. Except as otherwise provided in the Oklahoma Juvenile Code, a child who is charged with having violated any state statute or municipal ordinance other than those enumerated in Section 7306-1.1, 7306-2.5 or 7306-2.6 of this title, shall not be tried in a criminal action but in a juvenile proceeding. The juvenile proceeding may be filed before the child becomes eighteen (18) years of age or within ninety (90) days after the date of the eighteenth birthday of the child. 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

(Bold face denotes Committee Amendments)

1 testimony connected therewith, to the juvenile division of the
2 district court. The division making ~~such~~ the transfer shall order
3 the child to be taken forthwith to the place of detention designated
4 by the juvenile division, to that division itself, or release ~~such~~
5 the child to the custody of some suitable person to be brought
6 before the juvenile division. However, nothing in this act shall be
7 construed to prevent the exercise of concurrent jurisdiction by
8 another division of the district court or by municipal courts in
9 cases involving children wherein the child is charged with the
10 violation of a state or municipal traffic law or ordinance.

11 B. Except as otherwise provided by law, if a child is charged
12 with delinquency as a result of an offense which would be a felony
13 if committed by an adult, the court on its own motion or at the
14 request of the district attorney shall conduct a preliminary hearing
15 to determine whether or not there is prosecutive merit to the
16 complaint. If the court finds that prosecutive merit exists, it
17 shall continue the hearing for a sufficient period of time to
18 conduct an investigation and further hearing to determine if the
19 child should be held accountable for ~~his~~ acts of the child as if ~~he~~
20 the child were an adult if ~~he~~ the child should be found to have
21 committed the alleged act or omission.

22 Consideration shall be given to:

- 1 1. The seriousness of the alleged offense to the community, and
2 whether the alleged offense was committed in an aggressive, violent,
3 premeditated or willful manner;
- 4 2. Whether the offense was against persons or property, greater
5 weight being given to transferring the accused person to the adult
6 criminal justice system for offenses against persons and, if
7 personal injury resulted, the degree of personal injury;
- 8 3. The sophistication and maturity of the juvenile and ~~his~~
9 capability of the juvenile of distinguishing right from wrong as
10 determined by consideration of ~~his~~ a psychological evaluation of the
11 juvenile, home, environmental situation, emotional attitude and
12 pattern of living;
- 13 4. The record and previous history of the accused person,
14 including previous contacts with community agencies, law enforcement
15 agencies, schools, juvenile or criminal courts and other
16 jurisdictions, prior periods of probation or prior commitments to
17 juvenile institutions;
- 18 5. The prospects for adequate protection of the public;
- 19 6. The likelihood of reasonable rehabilitation of the juvenile
20 if ~~he~~ the juvenile is found to have committed the alleged offense,
21 by the use of procedures and facilities currently available to the
22 juvenile court; and

1 7. Whether the offense occurred while the juvenile was escaping
2 or in an escape status from an institution for delinquent children.

3 After ~~such~~ the investigation and hearing, the court may in its
4 discretion proceed with the juvenile proceeding, or it shall state
5 its reasons in writing and shall certify, based on clear and
6 convincing evidence, that ~~such~~ the child shall be held accountable
7 for ~~his~~ acts of the child as if ~~he~~ the child were an adult and shall
8 be held for proper criminal proceedings for the specific offense
9 charged, by any other division of the court which would have trial
10 jurisdiction of ~~such~~ the offense if committed by an adult. The
11 juvenile proceeding shall not be dismissed until the criminal
12 proceeding has commenced and if no criminal proceeding commences
13 within thirty (30) days of the date of ~~such~~ the certification,
14 unless stayed pending appeal, the court shall proceed with the
15 juvenile proceeding and the certification shall lapse.

16 If not included in the original summons, notice of a hearing to
17 consider whether a child should be certified for trial as an adult
18 shall be given to all persons who are required to be served with a
19 summons at the commencement of a juvenile proceeding, but
20 publication in a newspaper when the address of a person is unknown
21 is not required. The purpose of the hearing shall be clearly stated
22 in the notice.

1 C. Prior to the entry of any order of adjudication, any child
2 in custody shall have the same right to be released upon bail as
3 would an adult under the same circumstances. Subsequent to the
4 entry of an order that a child stand trial as an adult, ~~said~~ the
5 child shall have all the statutory and constitutional rights and
6 protections of an adult accused of a crime but shall, while awaiting
7 trial and for the duration of the trial, be detained in a jail cell
8 or ward entirely separate from prisoners who are eighteen (18) years
9 of age or over. Upon conviction, the juvenile may be incarcerated
10 with the adult population. If, prior to the entry of any order of
11 adjudication, the child becomes eighteen (18) years of age, the
12 child may be detained in a county jail or released on bail. If a
13 child is certified to stand trial as an adult, the court shall make
14 every effort to avoid duplication of the adult preliminary hearing
15 and the prosecutorial hearing in the juvenile certification process.
16 The parties may jointly stipulate to the court that the record for
17 the prosecutorial merit hearing in the juvenile proceeding be used
18 for all or part of the preliminary hearing.

19 D. Any child who has been certified to stand trial as an adult
20 pursuant to any certification procedure provided by law, or who has
21 been tried as an adult pursuant to any reverse certification
22 procedure provided by law, and is subsequently convicted of the
23 alleged offense, or against whom the imposition of judgment and

1 sentencing has been deferred, shall be tried as an adult in all
2 subsequent criminal prosecutions, and shall not be subject to the
3 jurisdiction of the juvenile court or be eligible to be tried as a
4 youthful offender in any further proceedings.

5 E. Any child seventeen (17) years of age or older who has been
6 certified to stand trial as an adult pursuant to any certification
7 procedure of any other state and subsequently convicted of the
8 alleged offense, or who has been tried and convicted as an adult in
9 any other state, or against whom the imposition of judgment and
10 sentencing has been deferred, shall be tried as an adult in all
11 subsequent criminal prosecutions, and shall not be subject to the
12 jurisdiction of the juvenile court or be eligible to be tried as a
13 youthful offender in any further proceedings.

14 F. An order either certifying a person as a child pursuant to
15 subsection B of this section or denying such certification shall be
16 a final order, appealable when entered.

17 SECTION 2. This act shall become effective November 1, 2004.

18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-23-04 - DO
19 PASS.