STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1286 By: Bastin

COMMITTEE SUBSTITUTE

An Act relating to children; amending 10 O.S. 1991, Sections 1101, as amended by Section 14, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1992, Section 1101), 1112 and 1123, which relate to juveniles; modifying certain definitions; providing for and modifying provisions relating to certain persons charged with violating certain statutes or ordinances; providing for and modifying certain proceedings; enacting the Youthful Offender Act; providing short title; providing for and modifying certain jurisdiction, detention, and probation; providing for and modifying certain presentence investigations; providing for certain sentencing and procedures relating thereto; providing for and modifying certain reviews; providing for custody of certain youthful offenders; providing for transfer of certain youthful offenders and procedures relating thereto; providing for certain parole and probation; providing for certain records; providing for certain appeals; providing for certain pardons; providing for certain exceptions and limitations; providing for establishment of certain sentencing guidelines; authorizing certain pardons; authorizing the setting aside of certain convictions under certain conditions; authorizing the destruction of certain records; providing for codification; repealing 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 certification of juvenile offenders; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1101, as amended by Section 14, Chapter 298, O.S.L 1992 (10 O.S. Supp. 1992, Section 1101), is amended to read as follows:

Section 1101. When used in this title, unless the context otherwise requires:

1. "Child" means any person under eighteen (18) years of age, except for any person sixteen (16) or seventeen (17) years of age who is charged with ~~any crime specified in subsection A of Section~~

~~1104.2 of this title, or who has been certified as an adult pursuant to Section 1112 of this title; provided that any person under eighteen (18) years of age who is not convicted after being charged with a crime pursuant to Section 1104.2 of this title, or who is not convicted after certification as an adult pursuant to Section 1112 of this title, shall continue to be subject to the jurisdiction of the juvenile court~~ assault and battery with a dangerous weapon, aggravated assault on a law officer, poisoning with intent to kill, shooting with intent to kill, assault with intent to kill, assault with intent to commit a felony, murder in the first degree, manslaughter in the first degree, manslaughter in the second degree, kidnapping, burglary in the first degree, kidnapping for extortion, maiming, robbery, child beating, wiring any equipment, vehicle or structure with explosives, forcible sodomy, rape in the first degree or rape by instrumentation, lewd or indecent proposition or lewd or indecent act with a child under sixteen (16) years of age, use of a firearm or offensive weapon to commit or attempt to commit a felony, pointing firearms, rioting, or arson in the first degree.

2. "Delinquent child" means a child who:

   a. has violated any federal or state law or municipal ordinance, except a traffic statute or traffic ordinance, or any lawful order of the court made pursuant to the provisions of Sections 1101 through 1506 of this title, or

   b. has habitually violated traffic laws or traffic ordinances.

3. "Child in need of supervision" means a child who:

   a. has repeatedly disobeyed reasonable and lawful commands or directives of his parent, legal guardian, or other custodian, or

   b. is willfully and voluntarily absent from his home without the consent of his parent, legal guardian, or other custodian for a substantial length of time or without intent to return, or

c. is willfully and voluntarily absent from school for fifteen (15) or more days or parts of days within a semester or four (4) or more days or parts of days within a four-week period without a valid excuse as defined by the local school boards, if said child is subject to compulsory school attendance.

4. "Deprived child" means a child:

a. who is for any reason destitute, homeless, or abandoned, or

b. who does not have the proper parental care or guardianship or whose home is an unfit place for the child by reason of neglect, cruelty, or depravity on the part of his parents, legal guardian, or other person in whose care the child may be, or

c. who is a child in need of special care and treatment because of his physical or mental condition including a child born in a condition of dependence on a controlled dangerous substance, and his parents, legal guardian, or other custodian is unable or willfully fails to provide said special care and treatment, or

d. who is a handicapped child deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of said child if such nutrition or medical treatment is generally provided to similarly situated nonhandicapped or handicapped children, provided that no medical treatment is necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child, or

e. who is, due to improper parental care and guardianship, absent from school for fifteen (15) or more days or parts of days within a semester or four (4) or more days or parts of days within a four-week

period without a valid excuse as defined by the local school boards if said child is subject to compulsory school attendance, or

f. whose parent or legal custodian for good cause desires to be relieved of his custody.

No child who, in good faith, is being provided with treatment and care by spiritual means alone in accordance with the tenets and practice of a recognized church or religious denomination by a duly accredited practitioner thereof shall be considered, for that reason alone, to be a deprived child pursuant to any provision of Sections 1101 through 1506 of this title. The phrase dependent and neglected shall be deemed to mean deprived.

5. "Child in need of mental health treatment" means a child in need of mental health treatment as defined by the Inpatient Mental Health Treatment of Children Act.

6. "Handicapped child" means any child who has a physical or mental impairment which substantially limits one or more of the major life activities of the child or who is regarded as having such an impairment by a competent medical professional.

7. "Department" means the Department of Human Services.

8. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition pursuant to the provisions of Section 1103 of this title are supported by the evidence and whether a child should be adjudged to be a ward of the court.

9. "Dispositional hearing" means a hearing to determine the order of disposition which should be made with respect to a child adjudged to be a ward of the court.

10. "Preliminary inquiry" or "intake" means a mandatory, preadjudicatory interview of the child and, if available, his parents, legal guardian, or other custodian, which is performed by a duly authorized individual to determine whether a child comes within the purview of this chapter, whether other nonadjudicatory alternatives are available and appropriate, and if the filing of a petition is necessary.

11. "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not

enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned or operated by a public or private agency.

12. "Secure facility" means a facility which is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeter of the facility, or a facility which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents.

13. "Community-based" means a facility, program or service, or open group home or other suitable place located near the home or family of the child, and programs of community supervision and service which maintain community participation in their planning, operation, and evaluation. These programs may include but are not limited to medical, educational, vocational, social, and psychological guidance, training, counseling, alcoholism treatment, drug treatment, transitional living, independent living and other rehabilitative services.

14. "Day treatment" means a program which provides intensive services to children who reside in their own home, the home of a relative, or a foster home. Day treatment programs include educational services and may be operated as a part of a residential facility.

15. "Group home" means a residential facility housing no more than twelve children with a program which emphasizes family-style living in a homelike environment. Said group home may also offer a program within the community to meet the specialized treatment needs of its residents.

16. "Transitional living program" means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting children to develop the skills and abilities necessary for successful adult living. Said program may include but shall not be limited to reduced staff supervision, vocational training, educational services, employment and

employment training, and other appropriate independent living skills training as a part of the transitional living program.

17. "Independent living program" means a program designed to assist a child to enhance skills and abilities necessary for successful adult living and may include but shall not be limited to minimal direct staff supervision and supportive services in making the arrangements necessary for an appropriate place of residence, completing an education, vocational training, obtaining employment or other similar services.

18. "Community residential center" means a residential facility for no more than twenty children which offers a range of services including personal and social services, and emphasizes normal group living, school attendance, securing employment, and general participation in the community.

19. "Institution" means a residential facility offering care and treatment for more than twenty residents. Said institution may:

a. have a program which includes community participation and community-based services, or

b. be a secure facility with a program exclusively designed for a particular category of resident.

20. "Mental health facility" means a mental health facility as defined by the Inpatient Mental Health Treatment of Children Act.

21. "Training school" means an institution maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of delinquent children.

22. "Rehabilitative facility" means a facility maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of children in need of supervision.

23. "Treatment center" means a facility maintained by the state for the care, education, training, treatment, and rehabilitation of children who are in the custody of the Department and who have been found by the court to be in need of treatment.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1112, is amended to read as follows:

Section 1112. ~~(a)~~ A. Except as otherwise provided, a child who is charged with having violated any state statute or municipal ordinance ~~other than those enumerated in Section 1104.2 of this title,~~ shall not be tried in a criminal action but in a juvenile proceeding. 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 testimony connected therewith, to the juvenile division of the district court. The division making such transfer shall order the child to be taken forthwith to the place of detention designated by the juvenile division, to that division itself, or release such child to the custody of some suitable person to be brought before the juvenile division. ~~However, nothing~~ Nothing in ~~this act~~ the provisions of Sections 1101 through 1506 of this title shall be construed to prevent the exercise of concurrent jurisdiction by another division of the district court or by municipal courts in cases involving children ~~wherein~~ in which the child is charged with the violation of a state or municipal traffic law or ordinance.

~~(b)~~ B. Except as otherwise provided by law, if ~~a~~:

1. A child fourteen (14) or fifteen (15) years of age is charged with delinquency as a result of ~~an offense which would be a felony if committed by an adult,~~ assault and battery with a dangerous weapon, aggravated assault on a law officer, poisoning with intent to kill, shooting with intent to kill, assault with intent to kill, assault with intent to commit a felony, murder in the first degree, manslaughter in the first degree, manslaughter in the second degree, kidnapping, burglary in the first degree, kidnapping for extortion, maiming, robbery, child beating, wiring any equipment, vehicle or structure with explosives, forcible sodomy, rape in the first degree or rape by instrumentation, lewd or indecent proposition or lewd or indecent act with a child under

sixteen (16) years of age, use of a firearm or offensive weapon to commit or attempt to commit a felony, pointing firearms, rioting, or arson in the first degree; or

2. A child sixteen (16) or seventeen (17) years of age who is charged with the delinquency as a result of an offense which would be a felony if committed by an adult;

the court on its own motion ~~or~~ may, at the request of the district attorney ~~shall~~, conduct a preliminary hearing to determine whether or not there is prosecutive merit to the complaint. If the court finds that prosecutive merit exists, it shall continue the hearing for a sufficient period of time to conduct an investigation ~~and further hearing~~ to determine the prospects for the reasonable rehabilitation of the child and the adequate protection of the public if ~~he~~ the child should be found to have committed the alleged act or omission by the use of dispositional alternatives available to the court pursuant to the provisions of this title.

Consideration shall be given to:

1. The seriousness of the alleged offense to the community, and 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 to offenses against persons ~~especially if~~ when personal injury resulted;

3. The sophistication and maturity of the ~~juvenile~~ person and his capability of distinguishing right from wrong as determined by consideration of his psychological evaluation, home, environmental situation, emotional attitude and pattern of living;

4. The record ~~and previous history~~ of the ~~juvenile~~ person, including previous ~~contacts~~ involvements with ~~community agencies,~~ law enforcement agencies, ~~schools, juvenile~~ or courts ~~and other jurisdictions~~, or prior periods of probation or prior commitments to ~~juvenile~~ institutions for delinquent behavior, and the previous history of the juvenile with community agencies and schools; and

5. ~~The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile if he is found to have committed the alleged offense, by the use of~~

~~procedures and facilities currently available to the juvenile court; and~~

~~6.~~ Whether the offense occurred while the juvenile was escaping or in an escape status from ~~an institution~~ a facility for delinquent children.

After such investigation and hearing, the court may ~~in its discretion~~ proceed with the juvenile proceeding, or it shall ~~state its reasons in writing and shall certify~~ issue an order certifying that such child shall be held accountable for his acts as if he were an adult or a youthful offender and shall be held for proper criminal proceedings, pursuant to the provisions of the Youthful Offender Act, for the specific offense charged, by any other division of the court which would have trial jurisdiction of such offense if committed by an adult. Said order shall include the reasons of the court for the certification. The juvenile proceeding shall not be dismissed until the adult criminal proceeding or the youthful offender proceeding has commenced ~~and if~~. If no adult criminal proceeding or youthful offender proceeding commences within thirty (30) days of the date of such certification, unless stayed pending an appeal, the court shall proceed with the juvenile proceeding and the certification shall lapse.

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

~~(c)~~ C. Prior to the entry of any order of adjudication, any child in custody shall have the same right to be released upon bail as would an adult under the same circumstances. Subsequent to the entry of an order that a child stand trial as an adult, said child shall have all the statutory and constitutional rights and protections of an adult accused of a crime but shall, while awaiting trial and for the duration of the trial, be detained in a

jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over. Upon conviction, the juvenile may be incarcerated with the adult population. If, prior to the entry of any order of adjudication, the child becomes eighteen (18) years of age, the child may be detained in a county jail or released on bail.

~~(d)~~ D. Any child who has been certified to stand trial as an adult or as a youthful offender pursuant to any certification procedure provided for by law and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred shall be tried as ~~an adult~~ such in all subsequent criminal prosecutions~~, and shall not be subject to the jurisdiction of the juvenile court in any further proceedings~~ until he attains eighteen (18) years of age, pursuant to the provisions of the Youthful Offender Act.

~~(e)~~ E. An order either certifying a person as ~~a child~~ an adult or as a youthful offender pursuant to subsection ~~(b)~~ B of this section or denying such certification shall be a final order, appealable when entered.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1123, is amended to read as follows:

Section 1123. A. Any interested party aggrieved by any order or decree may appeal to the Supreme Court in the same manner as other appeals are taken to the Supreme Court of this state~~; provided, however, that appeals~~. Appeals taken from a trial court's decision in a proceeding for an adjudication of juvenile delinquency or in a proceeding certifying a juvenile to stand trial as an adult or as a youthful offender or denying such certification shall be taken to the Court of Criminal Appeals in the same manner as other appeals are taken to the Court of Criminal Appeals of this state~~, and provided further that an~~. An order either certifying a juvenile to stand trial as an adult or as a youthful offender or denying such certification shall be a final order, appealable when entered.

B. The record on appeal of an order of adjudication or of an order certifying or denying certification of a juvenile to stand

trial as an adult or as a youthful offender shall be completed and the appeal perfected within sixty (60) days after the date of the order.

C. The pendency of an appeal ~~thus taken~~ as provided for in this section shall not suspend the order of the district court regarding a child, nor shall it discharge the child from the custody of that court or of the person, institution or agency to whose care such child has been committed, unless the Supreme Court or the Court of Criminal Appeals shall so order. The pendency of an appeal from an order of adjudication shall not prevent the district court from holding a dispositional hearing unless the appellate court shall so order. The pendency of an appeal from an order certifying a juvenile to stand trial as an adult or as a youthful offender shall not prevent the commencement of criminal proceedings against the juvenile unless stayed by the judge who issued the order of certification or by the appellate court. If the Supreme Court or the Court of Criminal Appeals does not dismiss the proceedings and discharge the child, it shall affirm or modify the order of the district court and remand the child to the jurisdiction of that court for supervision and care~~; and thereafter~~. Thereafter the child shall be and remain under the jurisdiction of the district court in the same manner as if such court had made such order without an appeal having been taken.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1700 of Title 10, unless there is created a duplication in numbering, reads as follows:

Sections 4 through 14 of this act shall be known and may be cited as the "Youthful Offender Act".

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1701 of Title 10, unless there is created a duplication in numbering, reads as follows:

For the purposes of the Youthful Offender Act, "youthful offender" means a person sixteen (16) or seventeen (17) years of age who is charged with assault and battery with a dangerous weapon, aggravated assault on a law officer, poisoning with intent to kill, shooting with intent to kill, assault with intent to

kill, assault with intent to commit a felony, murder in the first degree, manslaughter in the first degree, manslaughter in the second degree, kidnapping, burglary in the first degree, kidnapping for extortion, maiming, robbery, child beating, wiring any equipment, vehicle or structure with explosives, forcible sodomy, rape in the first degree or rape by instrumentation, lewd or indecent proposition or lewd or indecent act with a child under sixteen (16) years of age, use of a firearm or offensive weapon to commit or attempt to commit a felony, pointing firearms, rioting, or arson in the first degree and who has not been certified as an adult pursuant to the provisions of Section 1112 of Title 10 of the Oklahoma Statutes.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1702 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. When a person is alleged to be or found to be a youthful offender, all proceedings shall be as for a criminal action and the provisions of Title 22 of the Oklahoma Statutes shall apply, except as provided for in the Youthful Offender Act. A criminal action against a youthful offender shall be heard by a judge of the district court having juvenile docket responsibility.

B. Upon arrest and detention, a person alleged to be a youthful offender shall be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1703 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Except when the death sentence is imposed and prior to the imposition of sentence of a youthful offender by the court:

1. A presentence investigation shall be conducted unless waived by the youthful offender with approval of the court. Said presentence investigation shall be conducted unless waived by the Department of Human Services, by the juvenile bureau of the county, or by the county juvenile officer; and

2. The court shall conduct a hearing and shall consider:

a. the seriousness of the offense to the community, and whether the offense was committed in an aggressive, violent, premeditated or willful manner,

b. whether the offense was against persons or property, greater weight being given to offenses against persons when personal injury resulted,

c. the sophistication and maturity of the person and his capability of distinguishing right from wrong,

d. the record of the person including previous involvements with law enforcement agencies or courts, or prior periods of probation or prior commitments to institutions for delinquent behavior, and the previous history of the person with community agencies and schools,

e. the prospects for adequate protection of the public and the likelihood of rehabilitation of the person by the use of procedures and facilities available to the court, and

f. whether the offense occurred while the juvenile was escaping from a secure facility for delinquent children.

B. A youthful offender convicted of a crime in district court shall be sentenced as provided by law for punishment of the offense of which he was convicted, subject to the power and authority of the court to suspend sentence, defer judgment, or otherwise structure, limit, or modify sentence as provided in Title 22 of the Oklahoma Statutes or this act.

C. Probation supervision services, including the monitoring and administration of restitution and service programs, for all youthful offenders under the age of nineteen (19) years shall be provided by the Department of Human Services or by the juvenile bureau of the county and shall not be the duty or responsibility of the Department of Corrections.

D. In lieu of probation, commitment to the Department of Corrections, and other sentencing alternatives, the court may commit a youthful offender to the custody of a juvenile agency if

the youthful offender is less than eighteen (18) years of age at the time of sentencing and is not sentenced to death. As used in this act, the term "juvenile agency" means the Department of Human Services or any public or private institution or agency licensed by this state to provide care, custody or rehabilitative treatment for juvenile delinquents.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1704 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Whenever the sentence of a youthful offender has been suspended or judgment has been deferred and the court revokes the suspended sentence or enters judgment for cause as provided by law, the court may, in lieu of commitment to the Department of Corrections, commit the youthful offender to the custody of a juvenile agency as provided in subsection D of Section 7 of this act, if the youthful offender is less than eighteen (18) years of age at the time of such commitment.

B. Every youthful offender placed on probation shall be discharged from supervision by the Department of Human Services or the juvenile bureau of the county upon expiration of sentence or upon reaching the age of nineteen (19) years, whichever occurs first. The Department or the juvenile bureau may upon motion request that the court grant early discharge. Upon the motion of the state or upon its own motion the court may extend supervised probation, under supervision of the Department of Corrections, beyond the age of nineteen (19) for a period not to exceed expiration of sentence or two (2) years, whichever occurs first.

C. If a youthful offender is committed to the custody of a juvenile agency as provided in subsection D of Section 7 of this act, the sentencing court shall:

1. Conduct a semiannual review of the youth's sentence based upon written reports of the youth's conduct, progress and condition; and

2. Conduct a sentence review hearing within the thirty (30) days immediately preceding the date the youthful offender becomes eighteen (18) years of age.

Written reports concerning the conduct, progress and condition of a youthful offender shall be submitted to the sentencing court prior to scheduled reviews by the juvenile agency having custody of the youth. Copies of those reports shall be provided by the agency to the youthful offender, his counsel, parent or guardian, and the district attorney of the county in which the youth was convicted. The court shall consider any timely written response to the agency report before concluding its review. A sentence review hearing shall be conducted in open court after notice to the youth, his counsel, parent or guardian, the juvenile agency with custody, and the appropriate district attorney. The court may schedule semiannual review for hearing in open court, after notice, at its discretion and may schedule such other hearings, after notice, as the court deems necessary.

D. At the conclusion of any review hearing in open court and after consideration of all reports and other evidence properly submitted to the court, the court may:

1. Modify the youthful offender's sentence by reducing the length of sentence;

2. Transfer the youthful offender from the custody of one juvenile agency to the custody of another juvenile agency;

3. Terminate the sentence of the youthful offender and dismiss the case if the court finds the youth rehabilitated and is satisfied that the best interests of the public will not be jeopardized; or

4. Transfer the youthful offender to the custody of the Department of Corrections if the court finds that the youth has violated rules of parole or rules of the facility where he resides and that failure to transfer would be detrimental to the interests of the juvenile agency and the other persons committed thereto or the public.

E. If a youthful offender is committed to the custody of the Department of Corrections the sentencing court may, pursuant to the procedure prescribed in Section 982a of Title 22 of the Oklahoma Statutes and in lieu of any modification of sentence authorized by that section, modify the youthful offender's

sentence by placing him in the custody of a juvenile agency as provided in subsection A of Section 7 of this act if the youth is less than eighteen (18) years of age at the time of such modification.

F. For the purpose of calculating the time served to be applied toward the determination sentence of a youthful offender, in the event a youthful offender is placed under the supervision or custody of the Department of Human Services or other juvenile agency, he shall receive credit for any time served while in the custody or under the supervision of the agency. Upon transfer or commitment to the Department of Corrections, the youthful offender shall also receive other credits as provided by law, if any, as any adult inmate.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1705 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Upon motion of a juvenile agency with custody of a youthful offender and after notice and hearing, the sentencing court may order a youthful offender transferred to the custody of the Department of Corrections if it finds that the youthful offender has:

1. Injured or endangered the life or health of another person by his violent behavior;

2. Escaped or attempted to escape from an institution or other facility on more than one occasion; or

3. Violated the conditions of his parole; provided, however, that prior to transfer for violation of parole the court finds probable cause to believe that the youth has committed a crime or has absented himself from his residence or parole placement. Nothing in this subsection shall be construed as prohibiting the Department of Human Services from revoking the parole of a youthful offender less than eighteen (18) years of age by means applicable to delinquent parolees.

B. Said transfer hearing shall be held in the sentencing court within fifteen (15) days after the filing of the motion provided for in subsection A of this section.

C. Upon placement of custody with a juvenile agency, the youthful offender shall be advised of the provisions of this section.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1706 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Whenever a youthful offender is committed to the custody of the Department of Human Services, the Department may:

1. Place the youthful offender in a state training school or other institution or facility maintained by the state for delinquent children;

2. Place the youthful offender in a group home or community residential center;

3. Place the youthful offender in any licensed private child care facility deemed by the Department to be in the best interests of the youthful offender;

4. Place the youthful offender on parole after a period in one of the facilities referred to in paragraphs 1, 2 and 3 of this subsection or on immediate parole. The Department of Human Services may not confine a youthful offender in a state institution after the youthful offender reaches eighteen (18) years of age. The Department of Human Services is hereby authorized to provide parole and probation supervision to youthful offenders until such time said youthful offender reaches nineteen (19) years of age. The Department is further authorized to retain said youthful offenders who are on parole status in a community-based facility until the youth becomes nineteen (19) years of age.

B. Except as provided in this section, no juvenile agency shall retain custody of a youthful offender beyond the date the youth becomes eighteen (18) years of age.

C. Any department, institution or agency receiving custody of a youthful offender shall be responsible for the care and control of the youthful offender, and shall have the duty and the authority to provide food, clothing, shelter, ordinary medical care, education, discipline and in an emergency to authorize

surgery or other extraordinary care. Said medical care, surgery and extraordinary care shall be charged to the appropriate agency where the youthful offender qualifies for said care under law, rule, regulation or administrative order or decision. Nothing in this section shall abrogate the right of a youthful offender to any benefits provided through public funds nor the parent's statutory duty or responsibility to provide said necessities; further, no person, agency or institution shall be liable in a civil suit for damages for authorizing or not authorizing surgery or extraordinary care in an emergency, as determined by competent medical authority.

D. Every youthful offender on parole status with the Department of Human Services shall be discharged from parole supervision by the Department upon expiration of sentence or upon reaching the age of nineteen (19) years, whichever occurs first. The Department may upon motion request that the court grant early discharge. Upon the motion of the state or upon its own motion the court may require the Department of Corrections to provide supervision beyond the age of nineteen (19) years and until expiration of sentence.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1707 of Title 10, unless there is created a duplication in numbering, reads as follows:

After the imposition of sentence of a youthful offender, unless the defendant is granted probation, the district attorney shall transmit to the department having custody of the offender a written narrative report in the form as provided for in subsection C of Section 215.39 of Title 19 of the Oklahoma Statutes, describing the commission of the offense and any factors which might enhance or diminish the gravity of the offender's conduct, with the commitment papers and such other information as the department may request.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1708 of Title 10,

unless there is created a duplication in numbering, reads as follows:

When a youthful offender is transferred between the Department of Human Services and the Department of Corrections, the department from which the offender was transferred shall transfer a copy of all records relating to the youthful offender to the receiving department.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1709 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Upon the motion of a person who has been convicted and sentenced as a youthful offender, with the recommendation of the sentencing court, the Governor may grant a full and complete pardon and restore citizenship to any person who has been convicted and sentenced as a youthful offender and who has completed the sentence or been discharged from parole.

B. Upon the motion of a person convicted as a youthful offender, and five (5) years after the expiration of the sentence of the youthful offender, the court may set aside the conviction if:

1. The court has previously found the person rehabilitated;

2. The person was discharged from supervision by the Department of Human Services or a juvenile bureau, or was granted early discharge from such supervision by the court; or

3. The person has completed the sentence imposed as a result of his first conviction as a youthful offender and has no subsequent convictions.

If a conviction is set aside pursuant to this subsection, the person shall thereafter be released from all penalties and disabilities resulting from the offense for which he was convicted, including but not limited to, any disqualification for any employment or occupational license, or both, created by any other provision of law. The court may in addition order any law enforcement agency or district attorney to produce all files and records pertaining to said arrest and conviction of the youthful

offender and shall order the clerk of the court to destroy or obliterate the entire file and record of the case, including docket sheets, index entries, court records, summons, warrants or records in the office of the clerk or which have been produced by a law enforcement agency or district attorney in which the name of the youthful offender is mentioned. The court may order probation officers and counselors to destroy all records, reports, and social and clinical studies relating to said youthful offender that are in their possession except when said documents are necessary to maintain state or federal funding.

SECTION 14. REPEALER 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 hereby repealed.

SECTION 15. This act shall become effective January 1, 1994.

44-1-6525 MCD