

SHORT TITLE: Juveniles; youthful offenders; expanding list of offenses; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 733

By: Gustafson

AS INTRODUCED

An Act relating to juveniles; amending Sections 19 and 22, Chapter 290, O.S.L. 1994, as amended by Sections 165 and 168, Chapter 352, O.S.L. 1995 and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1996, Sections 7306-2.2 and 7306-2.5), which relate to youthful offenders; expanding list of offenses for which a juvenile may be tried as a youthful offender; and providing an effective date.

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

SECTION 1. AMENDATORY Section 19, Chapter 290, O.S.L. 1994, as amended by Section 165, Chapter 352, O.S.L. 1995 and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1996, Section 7306-2.2), is amended to read as follows:

Section 7306-2.2 A. For the purposes of the Youthful Offender Act:

1. "Youthful offender" means a person:

- a. ~~thirteen (13), fourteen (14), fifteen (15), sixteen (16) or seventeen (17)~~ under eighteen (18) years of age who is charged with murder in the first degree, murder in the second degree, robbery with a firearm or attempt thereof, rape in the first degree or attempt thereof, rape by instrumentation or attempt thereof,

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, or assault and battery with a deadly weapon and certified as a youthful offender as provided by Section 7306-2.5 of this title,

- b. fifteen (15), sixteen (16), and seventeen (17) years of age and charged with a crime listed in subsection A of Section 7306-2.6 of this title, and
- c. fourteen (14), fifteen (15), sixteen (16), or seventeen (17) years of age and certified as a youthful offender as provided by Section 7306-2.7 of this title; and

2. "Sentenced as a youthful offender" means the imposition of a court order making disposition of a youthful offender as provided by Section 7306-2.9 of this title.

B. It is the purpose of the Youthful Offender Act to better ensure the public safety by holding youths accountable for the commission of serious crimes, while affording courts methods of rehabilitation for those youths the courts determine, at their discretion, may be amenable to such methods. It is the further purpose of the Youthful Offender Act to allow those youthful offenders whom the courts find to be amenable to rehabilitation by the methods prescribed in the Youthful Offender Act to be placed in the custody or under the supervision of the Office of Juvenile Affairs for the purpose of accessing the rehabilitative programs provided by that Office and thereby, upon good conduct and successful completion of such programs, avoid conviction for a crime.

SECTION 2. AMENDATORY Section 22, Chapter 290, O.S.L. 1994, as amended by Section 168, Chapter 352, O.S.L. 1995 and as

renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1996, Section 7306-2.5), is amended to read as follows:

Section 7306-2.5 A. Any person ~~thirteen (13), fourteen (14), fifteen (15), sixteen (16) or seventeen (17)~~ under eighteen (18) years of age who is charged with murder in the first degree, murder in the second degree, robbery with a firearm or attempt thereof, rape in the first degree or attempt thereof, rape by instrumentation or attempt thereof, sodomy, lewd molestation, arson in the first degree or attempt thereof, 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, or assault and battery with a deadly weapon shall be held accountable for his acts as if he were an adult; provided, the person may be certified as a youthful offender as provided by this section.

B. 1. Upon the filing of an adult criminal 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 youthful offender to the juvenile division of the district court for the purpose of prosecution as a youthful offender.

2. 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.

3. 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 thorough 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.

4. Before service by publication is ordered, the court shall conduct an inquiry to determine whether a thorough search has been made of all reasonably available sources to ascertain the whereabouts of any party for whom notice by publication is sought.

C. 1. The accused person shall file a motion for certification as a youthful offender 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.

2. 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 youthful offender.

D. 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:

1. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

2. Whether the offense was against persons, and, if personal injury resulted, the degree of personal injury;

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;

4. The sophistication and maturity of the accused 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;

5. The prospects for adequate protection of the public if the accused person is processed through the youthful offender system;

6. The likelihood of reasonable rehabilitation of the accused person if he is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court; and

7. Whether the offense occurred while the accused person was escaping or on escape status from an institution for youthful offenders or delinquent children.

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.

E. Upon completion of the criminal preliminary hearing, if the accused person is certified as a youthful offender to the juvenile division of the district court for the purpose of prosecution as a youthful offender, all youthful offender court records relative to the accused person and the charge for which the accused person is certified as a youthful offender shall be expunged and any mention of the accused person shall be removed from public record.

F. An order certifying a person as a youthful offender or denying the request for certification as a youthful offender shall be a final order, appealable when entered.

G. If the accused person is prosecuted as an adult and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred, the person may be incarcerated with the adult population and shall be prosecuted as an adult in all subsequent criminal proceedings.

SECTION 3. This act shall become effective November 1, 1997.

46-1-0894

JT