STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2208 By: Askins

COMMITTEE SUBSTITUTE

An Act relating to children; amending Section 21, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 10, Chapter 268, O.S.L. 1998, Section 22, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 27, Chapter 293, O.S.L. 1997, Section 23, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 11, Chapter 268, O.S.L. 1998, Section 25, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 8, Chapter 365, O.S.L. 1999, Section 26, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 30, Chapter 293, O.S.L. 1997, Section 27, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 12, Chapter 268, O.S.L. 1998 and Section 29, Chapter 290, O.S.L. 1994, as amended by Section 175, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1999, Sections 7306-2.4, 7306-2.5, 7306-2.6, 7306-2.8, 7306-2.9, 7306-2.10 and 7306-2.12), which relate to the Youthful Offender Act; specifying which judges shall conduct certain proceedings; requiring detailed findings of fact and conclusion of law for certain decisions; adding crimes to acts mandating youthful offender status; authorizing waiver of investigations and hearings under certain circumstances; mandating court to impose sentence as youthful offender; removing time period for review of hearings; authorizing destruction of certain records; removing clear and convincing burden of proof for certain findings; adding criteria transferring youthful offender to the custody of the Department of Corrections; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 21, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as

last amended by Section 10, Chapter 268, O.S.L. 1998 (10 O.S. Supp. 1999, Section 7306-2.4), is amended to read as follows:

Section 7306-2.4 A. A child who is arrested for an offense pursuant to subsection A or B of Section 7306-2.6 of this title or who is certified as a youthful offender pursuant to Section 7306-2.5 of this title, shall be charged by information in the same manner as provided for adults.

B. When a person is certified to stand trial as an adult or a youthful offender as provided by the Youthful Offender Act, the accused person shall have all the statutory and constitutional rights and protections of an adult accused of a crime. 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. All youthful offender court records for such a person shall be considered adult records and shall not be subject to the provisions of Article VII of the Oklahoma Juvenile Code.

C. Proceedings against a youthful offender shall be heard by any judge of the district court <u>who is assigned adult criminal dockets</u>.

D. Upon arrest and detention of a person subject to the provisions of Section 7306-2.5 or 7306-2.6 of this title, the person has the same right to be released on bail as would an adult in the same circumstances and, if detained, may be detained in a juvenile detention facility or in a county jail if separated from the adult population as otherwise authorized by law.

E. Upon a verdict of guilty or entry of a plea of guilty or nolo contendere by a youthful offender who has been certified for the imposition of an adult sentence as provided by Section 7306-2.8 of this title the person may be detained as an adult and, if incarcerated, may be incarcerated with the adult population.

F. A child or youthful offender shall be tried as an adult in all subsequent criminal prosecutions, and shall not be subject to the jurisdiction of the juvenile court or youthful offender processes in any further proceedings if:

1. The child or youthful offender has been certified to stand trial as an adult pursuant to any certification procedure provided by law; or

2. The youthful offender has been certified for the imposition of an adult sentence as provided by Section 7306-2.8 of this title and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred.

G. Except as otherwise provided in the Youthful Offender Act, a person who has been prosecuted and sentenced as a youthful offender shall be prosecuted as a youthful offender in all subsequent criminal proceedings until the youthful offender has attained eighteen (18) years of age.

All proceedings for the commission of a crime committed after a youthful offender has reached eighteen (18) years of age shall be adult proceedings.

H. When a person who has been sentenced as a youthful offender is placed in the custody or under the supervision of the Office of Juvenile Affairs, if the youthful offender has not been previously discharged by the court from the custody or supervision of the Office of Juvenile Affairs, within the thirty (30) days immediately preceding the date on which the youthful offender becomes eighteen (18) years of age, or if extended by the court, nineteen (19) years of age, the court shall hold a review hearing and shall make further orders regarding the youthful offender as provided by Section 7306-2.10 of this title.

SECTION 2. AMENDATORY Section 22, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as

last amended by Section 27, Chapter 293, O.S.L. 1997 (10 O.S. Supp. 1999, 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) years of age who is charged with murder in the first degree shall be held accountable for his acts as if he were an adult; provided, the person may be certified as a youthful offender or a juvenile as provided by this section, unless the person is subject to the provisions of subsection F of Section 7306-2.4 of this title.

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 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 or a juvenile, or both, 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~~ a motion for certification as ~~a youthful offender or~~ a juvenile. If a motion for certification as a juvenile is denied and a bind over order is entered, then a motion for certification as a youthful offender shall be heard by the trial judge.

D. The court shall rule on the motion for certification ~~motion of the accused person~~ as a juvenile before ruling on whether to bind the accused over for trial. When ruling on the motion for certification ~~motion of the accused person~~ as a juvenile, 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 or the juvenile 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 motion for certification ~~motion of the accused person, need not~~ as a juvenile, shall detail ~~responses~~ findings of fact and conclusions of law to each of the above considerations, ~~but~~ and shall state that the court has considered each of the guidelines in reaching its decision.

E. The trial judge shall rule on the motion for certification as a youthful offender prior to trial or before the entry of the plea of guilty or nolo contendere. When ruling on the motion for certification as a youthful offender, the trial judge shall give consideration to the guidelines as set forth in subsection D of this section. The court, in its decision on the motion for certification as a youthful offender, shall detail findings of fact and conclusions of law to each of the items listed in subsection D of this section and shall state that the court has considered each of the guidelines in reaching its decision.

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

~~F.~~ 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. AMENDATORY Section 23, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 11, Chapter 268, O.S.L. 1998 (10 O.S. Supp. 1999, Section 7306-2.6), is amended to read as follows:

Section 7306-2.6 A. Any person fifteen (15), sixteen (16) or seventeen (17) years of age who is charged with:

1. Murder in the second degree;

2. Kidnapping for the purpose of extortion;

3. Manslaughter in the first degree;

4. Robbery with a dangerous weapon or attempt thereof;

5. Robbery with a firearm or attempt thereof;

6. Rape in the first degree or attempt thereof;

7. Rape by instrumentation or attempt thereof;

8. Forcible sodomy;

9. Lewd molestation;

10. Arson in the first degree or attempt thereof;

11. Shooting with intent to kill; ~~or~~

12. Discharging a firearm, crossbow or other weapon from a vehicle pursuant to subsection B of Section 652 of Title 21 of the Oklahoma Statutes~~,~~;

13. Battery or assault and battery or aggravated assault and battery on state employees or contractors pursuant to Section 650.2 of Title 21 of the Oklahoma Statutes; or

14. Battery or assault and battery or aggravated assault and battery upon an employee of a state facility for delinquent children pursuant to Section 650.8 of Title 21 of the Oklahoma Statutes;

shall be held accountable for his acts as a youthful offender.

B. Any person sixteen (16) or seventeen (17) years of age who is charged with:

1. Burglary in the first degree or attempted burglary in the first degree;

2. Aggravated assault and battery of a police officer;

3. Intimidating a witness;

4. Trafficking in or manufacturing illegal drugs;

5. Assault or assault and battery with a deadly weapon;

6. Maiming;

7. Residential burglary in the second degree after two or more adjudications that are separated in time for delinquency for committing burglary in the first degree or residential burglary in the second degree; ~~or~~

8. Rape in the second degree~~,~~; or

9. Possession or use of a firearm while in commission of a felony,

shall be held accountable for his acts as a youthful offender.

C. Except as provided in subsection G of Section 7306-2.4 of this title, after a preliminary inquiry conducted by the Department of Juvenile Justice or a juvenile bureau, whichever is applicable for the county, the district attorney may file a petition alleging the person to be a delinquent or may file an information against the accused person charging the person as a youthful offender.

D. 1. Upon the filing of the information against such alleged youthful offender, 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, and to have an attorney present.

2. The warrant shall be personally served together with a certified copy of the information on the alleged youthful offender 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 alleged youthful offender 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.

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.

E. 1. The accused person may file a motion for certification to the juvenile system before the start of the criminal preliminary hearing:

a. 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,

b. 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.

2. If no motion to certify the accused person to the juvenile system has been filed, at the conclusion of the criminal preliminary hearing the court may on its own motion hold a hearing on the matter of the certification of the accused youthful offender to the juvenile system.

3. The court shall rule on the certification motion before ruling on whether to bind the accused over for trial. When ruling on the certification motion, the court shall give consideration to the following guidelines:

a. the seriousness of the alleged offense to the community, and whether the alleged 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, and if personal injury resulted, the degree of personal injury,

c. the sophistication and maturity of the juvenile 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,

d. the record and previous history of the accused person, including previous contacts with community agencies, law enforcement agencies, schools, juvenile courts and other jurisdictions, prior periods of probation or prior commitments to juvenile institutions,

e. the prospects for adequate protection of the public,

f. 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

g. whether the offense occurred while the accused person was escaping or in an escape status from an institution for delinquent children.

4. In its decision on the motion for certification ~~of the accused person~~ as a juvenile the court ~~need not~~ shall detail ~~responses~~ findings of fact and conclusions of law to each of the above considerations~~, but~~ and shall state that the court has considered each of the guidelines in reaching its decision.

5. An order certifying a person or denying such certification to the juvenile system shall be a final order, appealable when entered.

F. Upon conviction, sentence may be imposed as a sentence for a youthful offender as provided by Section 7306-2.9 of this title. If the youthful offender sentence is imposed as an adult sentence as provided by Section 7306-2.8 of this title, the juvenile may be incarcerated with the adult population.

SECTION 4. AMENDATORY Section 25, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 8, Chapter 365, O.S.L. 1999 (10 O.S. Supp. 1999, Section 7306-2.8), is amended to read as follows:

Section 7306-2.8 A. Whenever the district attorney believes that there is good cause to believe that a person charged as a youthful offender would not reasonably complete a plan of rehabilitation or the public would not be adequately protected if the person were to be sentenced as a youthful offender, and should receive an adult sentence, the district attorney shall file a motion for consideration of the imposition of the sentence as for an adult if the person is convicted:

1. Not less than ten (10) days prior to the trial; or

2. At the time of a guilty plea or plea of nolo contendere.

B. Upon the filing of such motion and prior to the trial or before the entry of the plea of guilty or nolo contendere the court shall hold a hearing to determine the matter.

C. 1. The court shall order an investigation to be conducted unless waived by the accused person with approval of the court. Any such investigation required shall be conducted by the Department of Juvenile Justice.

2. At the hearing the court shall consider:

a. the seriousness of the alleged 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 for offenses against persons and, if personal injury resulted, the degree of injury,

c. 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,

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,

f. the likelihood of reasonable rehabilitation of the youthful offender if he is found to have committed the alleged offense, by the use of procedures and

facilities currently available to the court if the accused person is processed through the youthful offender system, and

g. whether the offense occurred while the person was escaping from a secure facility for youthful offenders or delinquent children.

D. After the hearing and consideration of the report of the investigation, the court shall certify the person as eligible for the imposition of an adult sentence only if ~~it finds by clear and convincing evidence that~~ there is good cause to believe that the accused person would not reasonably complete a plan of rehabilitation or that the public would not be adequately protected if the person were to be sentenced as a youthful offender.

In its decision on the motion of the state for imposition of an adult sentence, the court shall detail findings of fact and conclusions of law to each of the considerations in subsection C of this section and shall state that the court has considered each of its guidelines in reaching its decision.

E. An order certifying or denying certification for imposition of an adult sentence shall be a final order, appealable when entered.

F. The trial court, in its discretion, may waive the requirements of subsections B and C of this section if similar investigations and hearings have been previously conducted pursuant to Section 7306-2.5 of this title.

~~E.~~ G. If the person has been certified as eligible to be sentenced as an adult, the court shall, upon a verdict of guilty or the entry of a plea of guilty or nolo contendere, impose sentence as provided by law for an adult for punishment of the offense committed, subject to the power and authority of the court to suspend or delay sentence, defer judgment, or otherwise structure, limit, or modify sentence as provided in Title 22 of the Oklahoma

Statutes or the Youthful Offender Act. When sentence is imposed pursuant to this subsection, the person shall be treated as an adult for purposes of supervision, incarceration and in all subsequent criminal proceedings.

~~F.~~ H. Upon a verdict of guilty or a plea of guilty or nolo contendere, the court may order the person to pay a fee to the Department of Juvenile Justice of not less than Five Dollars ($5.00), nor more than Two Hundred Fifty Dollars ($250.00), for the presentence investigation. In hardship cases, the court may waive the fee or set the amount of the fee and establish a payment schedule.

SECTION 5. AMENDATORY Section 26, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 30, Chapter 293, O.S.L. 1997 (10 O.S. Supp. 1999, Section 7306-2.9), is amended to read as follows:

Section 7306-2.9 A. Upon a verdict of guilty or a plea of guilty or nolo contendere of a youthful offender and prior to the imposition of a youthful offender sentence by the court:

1. A youthful offender presentence investigation shall be conducted unless waived by the youthful offender with approval of the court or unless an investigation is conducted pursuant to subsection C of Section 7306-2.8 of this title. Any presentence investigation required shall be conducted by the Department of Juvenile Justice; and

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

a. 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 and the degree of injury,

c. the sophistication and maturity of the juvenile 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,

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,

f. the likelihood of reasonable rehabilitation of the youthful offender by the use of procedures and facilities currently available to the court if the accused person is processed through the youthful offender system, and

g. whether the offense occurred while the person was escaping from a secure facility for youthful offenders or delinquent children.

B. After the hearing and consideration of the report of the presentence investigation, the court ~~may~~ shall impose sentence as a youthful offender ~~in the manner provided by law for an adult for punishment of the offense committed, subject to the power and authority of the court to suspend or delay sentence, defer judgment, or otherwise structure, limit, or modify sentence as provided in Title 22 of the Oklahoma Statutes or the Youthful Offender Act~~. In no event shall the sentence exceed the amount of time of a possible sentence for an adult convicted of the same offense or ten (10) years, whichever is less. The court ~~may~~ shall make the following dispositional orders regarding a youthful offender:

1. Place the youthful offender under the supervision of the Office of Juvenile Affairs through its Department of Juvenile Justice; and

2. Place the youthful offender in the custody of the Office of Juvenile Affairs.

In addition to or in lieu of the placement of the youthful offender in the custody of or under the supervision of the Office of Juvenile Affairs, the court may issue orders with regard to the youthful offender as provided by law for the disposition of a child adjudicated delinquent.

SECTION 6. AMENDATORY Section 27, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 12, Chapter 268, O.S.L. 1998 (10 O.S. Supp. 1999, Section 7306-2.10), is amended to read as follows:

Section 7306-2.10 A. Whenever a youthful offender is placed in the custody of or under the supervision of the Office of Juvenile Affairs, the Office shall within thirty (30) days prepare and file with the court a written rehabilitation plan for the youthful offender. The rehabilitation plan shall include but not be limited to:

1. When the youthful offender is placed in the custody of the Office of Juvenile Affairs, the placement of the youthful offender;

2. Clearly stated, measurable objectives which the youthful offender is expected to achieve; and

3. The services that will be provided to the youthful offender by the Department of Juvenile Justice to assist the youthful offender to achieve the objectives.

B. Whenever a youthful offender is placed in the custody or under the supervision of the Office of Juvenile Affairs as provided by the Youthful Offender Act, the court shall conduct a semiannual review based upon written reports of the youth's conduct, progress and condition. Written reports concerning the conduct, progress and

condition of a youthful offender shall be submitted to the court prior to scheduled reviews by the Department of Juvenile Justice. Such reports shall include a written report of the youthful offender with respect to the rehabilitation plan. Copies of those reports shall be provided by the agency to the youthful offender, his counsel, parent or guardian if the youthful offender is less than eighteen (18) years of age, and the district attorney. The court shall consider any timely written response to the agency report before concluding its review.

C. The court may schedule a ~~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. The court shall hold a review hearing for good cause shown, upon the motion of the district attorney, the Department of Juvenile Justice, or the youthful offender for the purpose of making a determination as to:

1. The discharge of the youthful offender from the supervision or custody of the Department of Juvenile Justice; or

2. A change in the custody status of the youthful offender. For the purpose of this section, "change in the custody status" means a revocation of an order of probation or supervision, revocation of parole, or a transfer of custody or supervision to the Department of Corrections.

D. If the youthful offender has not been previously discharged, the court shall hold a review hearing within the thirty (30) days immediately preceding the date the youthful offender becomes eighteen (18) years of age or nineteen (19) years of age, if extended by law.

E. A review hearing shall be conducted in open court after notice to the youth, his counsel, parent or guardian if the youthful offender is less than eighteen (18) years of age, the Department of Juvenile Justice, and the appropriate district attorney.

F. 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. Order the youthful offender discharged from the supervision or custody of the Department of Juvenile Justice without a court judgment of guilt, and order the verdict or plea of guilty or plea of nolo contendere expunged from the record as provided in paragraphs 1 through 5 of subsection C of Section 991c of Title 22 of the Oklahoma Statutes and dismiss the charge with prejudice to any further action if the court finds that the youthful offender has reasonably completed the rehabilitation plan and objectives and that such dismissal will not jeopardize public safety. If a youthful offender has been discharged without a court order judgment of guilt and the charge has been dismissed with prejudice as provided in this paragraph, upon the motion of the youthful offender and three (3) years after such discharge and dismissal, the court may, in addition, order any law enforcement agency to produce all files and records pertaining to the 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 in which the name of the youthful offender is mentioned. The court may order probation officers and counselors of the Office of Juvenile Affairs to destroy all records, reports, and social and clinical studies relating to the youthful offender that are in the possession of the Office of Juvenile Affairs, except when the documents are necessary to maintain state or federal funding;

2. Revoke an order of probation and place the youthful offender in the custody of the Office of Juvenile Affairs;

3. Revoke a community supervision placement by the Department of Juvenile Justice;

4. Place the youthful offender in a sanction program operated or contracted for by the Office of Juvenile Affairs community placement, if the youthful offender fails to comply with a written plan of rehabilitation or fails substantially to achieve reasonable treatment objectives while in community or other nonsecure programs; or

5. Enter a judgment of guilt ~~and proceed as provided in Section 991a of Title 22 of the Oklahoma Statutes~~ as an adult and impose the remainder of the sentence subject to the authority of the court to suspend or delay sentence, or otherwise structure, limit or modify a sentence as provided in Title 22 of the Oklahoma Statutes, including transfer of the youthful offender to the custody or supervision of the Department of Corrections for the remainder of the youthful offender sentence, if the court finds ~~by clear and convincing evidence~~ that the youthful offender has:

a. after conviction as a youthful offender, seriously injured or endangered the life or health of another person by his violent behavior,

b. escaped from a training school,

c. committed a felony crime while in the custody or under the supervision of the Department of Juvenile Justice as shown by a judgment entered following a verdict of guilty or a plea of guilty or nolo contendere, ~~or~~

d. failed substantially to comply with ~~a~~ the previously adopted written plan of rehabilitation ~~or~~,

e. inability due to the age of the youthful offender to substantially comply with a written plan of rehabilitation, or

f. failed substantially to achieve reasonable treatment objectives ~~and is within thirty (30) days of his eighteenth birthday, or nineteenth birthday if custody has been extended,~~ and ~~is still~~ continues to be placed

in an institution or other long-term staff secure facility.

The court, in its decision on the motion to enter a judgment of guilt and transfer custody of the youthful offender to the custody of the Department of Corrections shall detail findings of fact and conclusions of law addressing the grounds alleged in the motion of the state.

G. An order entering a judgment of guilt and transferring custody of a youthful offender to the Department of Corrections shall result in an adult conviction and shall be a final order, appealable when entered.

~~G.~~ H. For the purpose of calculating time served to be applied toward any sentence imposed upon a youthful offender, in the event a youthful offender has been placed in the custody or under the supervision of the Office of Juvenile Affairs, he shall receive credit for the time spent in the custody or under the supervision of the Office of Juvenile Affairs. Upon commitment to the Department of Corrections, a youthful offender shall also receive other credits as provided by law, for an adult inmate.

SECTION 7. AMENDATORY Section 29, Chapter 290, O.S.L. 1994, as amended by Section 175, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1999, Section 7306-2.12), is amended to read as follows:

Section 7306-2.12 A. Upon the motion of a person who has been convicted and sentenced as a youthful offender and who has been subsequently transferred to the adult system pursuant to Section 7306-2.10 of this title, 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 three (3) 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 that the person has reasonably complied with the rehabilitation plan and objectives;

2. The person was discharged from supervision by the Office of Juvenile Affairs, 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 youthful offender 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 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 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 8. This act shall become effective July 1, 2000.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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