

ENROLLED HOUSE
BILL NO. 2208

By: Askins of the House

and

Wilkerson of the Senate

An Act relating to children; amending Section 132, Chapter 352, O.S.L. 1995, as last amended by Section 1, Chapter 406, O.S.L. 1999 (10 O.S. Supp. 1999, Section 7303-5.3), which relates to kinds of disposition orders; modifying types of disposition orders that may be entered regarding certain delinquent juveniles; amending Section 20, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 25, Chapter 293, O.S.L. 1997, 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 10 of Enrolled House Bill No. 2169 of the 2nd Session of the 47th Oklahoma Legislature 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 7306-2.3, 7306-2.4, 7306-2.5, 7306-2.6, 7306-2.8, 7306-2.9 and 7306-2.12), which relate to the Youthful Offender Act; authorizing consolidation of trial of offenses under certain circumstances; specifying where certain individuals may be detained; specifying procedures for filing of certain motions; specifying time periods in which certain court proceedings must be held; requiring detailed findings of fact and conclusions of law for certain decisions; adding crime to acts mandating youthful offender status; mandating court to impose sentence as youthful offender; modifying time period for filing of certain motions; providing exception; mandating court enter certain orders; specifying time period for review hearings; authorizing destruction of certain records; specifying procedures to be

followed for imposition of adult punishment; authorizing extended jurisdiction for youthful offenders under certain circumstances; adding criteria for transferring youthful offender to the custody of the Department of Corrections; establishing Task Force on Services to Older Youthful Offenders; establishing membership of Task Force; establishing method for appointment of chair and vice-chair of Task Force; providing for reimbursement of travel expense of Task Force members; stating duties of Task Force; requiring Task Force to make certain reports and recommendations to the Governor and Legislature; providing for noncodification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 132, Chapter 352, O.S.L. 1995, as last amended by Section 1, Chapter 406, O.S.L. 1999 (10 O.S. Supp. 1999, Section 7303-5.3), is amended to read as follows:

Section 7303-5.3 A. The following kinds of orders of disposition may be made in respect to children adjudicated in need of supervision or delinquent:

1. The court may place the child on probation or under supervision in the home of the child, or in the custody of a suitable person, upon such conditions as the court shall determine. The court may require the parent or other person to give security by bond, with surety or sureties approved by the court, for compliance with such order. If the child is placed on probation, the court may impose a probation supervision fee of not more than Twenty-five Dollars (\$25.00) per month, if the court finds that the child or parent or legal guardian of the child has the ability to pay the fee. In counties having a juvenile bureau, the fee shall be paid to the juvenile bureau; in all other counties, the fee shall be paid to the Office of Juvenile Affairs.

2. If it is consistent with the welfare of the child, the child shall be placed with the parent or legal guardian of the child, but if it appears to the court that the conduct of such parent, guardian, legal guardian, stepparent or other adult person living in the home has contributed to the child becoming delinquent or in need of supervision, the court may issue a written order specifying conduct to be followed by such parent, guardian, legal custodian, stepparent or other adult person living in the home with respect to such child. The conduct specified shall be such as would reasonably prevent the child from continuing to be delinquent or in need of supervision. Such order shall remain in effect for a period of not more than one (1) year to be specified by the court, and the order may be extended or renewed by the court.

a. If it is consistent with the welfare of the child, in cases where the child has been adjudicated to be in need of supervision due to repeated absence from school, the court may order counseling and treatment

for the child and the parents of the child to be provided by the local school district, the county, the Department or a private individual or entity. Prior to final disposition, the court shall require that it be shown by the appropriate school district that a child found to be truant has been evaluated for learning disabilities, hearing and visual impairments and other impediments which could constitute an educational handicap or has been evaluated to determine whether the child has a disability if it is suspected that the child may require special education services in accordance with the Individuals with Disabilities Education Act (IDEA). The results of such tests shall be made available to the court for use by the court in determining the disposition of the case.

- b. In issuing orders to a parent, guardian, legal guardian, stepparent or other adult person living in the home of a child adjudicated to be a delinquent child or in making other disposition of said delinquent child, the court may consider the testimony of said parent, guardian, legal guardian, stepparent or other adult person concerning the behavior of the juvenile and the ability of such person to exercise parental control over the behavior of the juvenile.
- c. In any dispositional order involving a child age sixteen (16) or older, the court shall make a determination, where appropriate, of the services needed to assist the child to make the transition to independent living.

No child who has been adjudicated in need of supervision only upon the basis of truancy or noncompliance with the mandatory school attendance law shall be placed in a public or private institutional facility or be removed from the custody of the lawful parent, guardian or custodian of the child.

3. The court may commit the child to the custody of a private institution or agency, including any institution established and operated by the county, authorized to care for children or to place them in family homes. In committing a child to a private institution or agency, the court shall select one that is licensed by any state department supervising or licensing private institutions and agencies; or, if such institution or agency is in another state, by the analogous department of that state. Whenever the court shall commit a child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and such institution or agency shall give to the court such information concerning the child as the court may at any time require.

4. The court may order the child to receive counseling or other community-based services as necessary.

5. The court may order the child to participate in a military mentor program administered by the Oklahoma Military Department, if such program:

- a. is staffed by National Guard or qualified civilian personnel who are trained by the Oklahoma Military Department pursuant to training standards established by the Department of Juvenile Justice and meets screening requirements established by the Department of Juvenile Justice,
- b. provides for adequate supervision of the child, and
- c. is designed to develop useful skills and abilities of the child and/or integrate the child into community service activities or public works projects.

The Office of Juvenile Affairs through its Department of Juvenile Justice and the Oklahoma Military Department are hereby authorized to enter into an agreement to provide for the effective development and implementation of this paragraph.

6. The court may commit the child to the custody of the Office of Juvenile Affairs under the supervision of the Department of Juvenile Justice. Any order adjudicating the child to be delinquent and committing the child to the Department of Juvenile Justice shall be for an indeterminate period of time. If the adjudication is for distribution of a controlled dangerous substance or possession with intent to distribute a controlled dangerous substance, the court may require that the offender be placed in a ~~residential~~ regimented juvenile training program as described in Section 7302-6.9 of this title, or a secure facility operated or contracted for by the Office of Juvenile Affairs. Said placement must occur within sixty (60) days of disposition unless extended by the court for an additional sixty (60) days.

7. If the child has been placed outside the home, and it appears to the court that the parent, guardian, legal custodian, or stepparent, or other adult person living in the home has contributed to the child becoming delinquent or in need of supervision, the court may order that the parent, guardian, legal custodian, stepparent, or other adult living in the home be made subject to any treatment or placement plan prescribed by the Department or other person or agency receiving custody of the child.

8. With respect to a child adjudicated a delinquent child, the court may:

- a. for acts involving criminally injurious conduct as defined in Section 142.3 of Title 21 of the Oklahoma Statutes, order the child to pay a victim compensation assessment in an amount not to exceed that amount specified in Section 142.18 of Title 21 of the Oklahoma Statutes. The court shall forward a copy of the adjudication order to the Crime Victims Compensation Board for purposes of Section 142.11 of Title 21 of the Oklahoma Statutes. Except as otherwise provided by law, such adjudication order shall be kept confidential by the Board,
- b. order the child to engage in a term of community service without compensation. The state or any political subdivision shall not be liable if a loss or claim results from any acts or omission of a child

ordered to engage in a term of community service pursuant to the provisions of this paragraph,

- c. if it is consistent with the welfare of the child, require community service or restitution or both community service and restitution for acts of delinquency. The immunities provided by Sections 227 and 228 of Title 57 of the Oklahoma Statutes shall apply to community services directed pursuant to this section. The court may order the parents or custodial parent of any child living with the parents or custodial parent to supervise the performance of community service by the child. The court may order the parents or custodial parent of any child living with the parents or custodial parent at the time of the criminal or delinquent act of the child to remit the amount of restitution ordered by the court. The court may consider any hardship of such order on the parents or custodial parent of the child. The parents or custodial parent may be represented by an attorney in the matter of the order for remittance of the restitution by the parents or custodial parent. Provided however, if the court orders the parents or custodial parent to remit the amount of restitution as provided for in this paragraph, in addition to any other dispositional orders of the court, the court shall order the child to perform community service for the number of hours commensurate with the number of hours it would require under federal or state minimum wage to earn the amount paid by such child's parents or custodial parent under the order to remit restitution,
- d. order the child to pay the fine which would have been imposed had such child been convicted of such crime as an adult. Any such fine collected pursuant to this paragraph shall be deposited in a special Work Restitution Fund to be established by the court to allow children otherwise unable to pay restitution to work in community service projects in the private or public sector to earn money to compensate their victims,
- e. order the cancellation or denial of driving privileges as provided by Sections 6-107.1 and 6-107.2 of Title 47 of the Oklahoma Statutes,
- f. in accordance with the guidelines approved and adopted by the Oklahoma Supreme Court for the implementation of the Serious and Habitual Juvenile Offender Program, make the following orders: sanction detention in the residence of the child or facility designated by the Department of Juvenile Justice or the juvenile bureau for such purpose for up to five (5) days; weekend detention in a place other than a juvenile detention facility or shelter; tracking; or house arrest with electronic monitoring. On and after the adoption of guidelines by the Oklahoma Supreme Court for the implementation of the Serious and Habitual Juvenile Offender Program, the provisions of subparagraphs a

through e of this paragraph shall be subject to said guidelines,

- g. in accordance with the guidelines approved and adopted by the Oklahoma Supreme Court for the implementation of the Serious and Habitual Juvenile Offender Program, impose sanctions for the violation of preadjudicatory or postadjudicatory violations of probation.

9. The court may dismiss the petition or otherwise terminate its jurisdiction at any time for good cause shown.

10. In any dispositional order removing a child from the home of the child, the court shall make a determination that, in accordance with the best interests of the child and the protection of the public, reasonable efforts have been made to provide for the return of the child to the child's own home, or that efforts to reunite the family are not feasible, and reasonable efforts are being made to secure an alternate permanent placement for the child.

B. Prior to adjudication or as directed by a law enforcement subpoena or court order, a school district may disclose educational records to the court or juvenile justice system for purposes of determining the ability of the juvenile justice system to effectively serve a child. Any disclosure of educational records shall be in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA).

C. With respect to a child adjudicated a delinquent child for a violent offense, within thirty (30) days of the date of the adjudication either the juvenile bureau in counties which have a juvenile bureau or the Office of Juvenile Affairs in all other counties shall notify the superintendent of the school district in which the child is enrolled or intends to enroll of the delinquency adjudication and the offense for which the child was adjudicated.

D. No child who has been adjudicated in need of supervision may be placed in a state training school.

E. No child charged in a state or municipal court with a violation of state or municipal traffic laws or ordinances, or convicted therefor, may be incarcerated in jail for any said violation unless the charge for which the arrest was made would constitute a felony if the child were an adult. Nothing contained in this subsection shall prohibit the detention of a juvenile for traffic-related offenses prior to the filing of a petition in the district court alleging delinquency as a result of said acts and nothing contained in this section shall prohibit detaining a juvenile pursuant to Section 7303-1.2 of this title.

F. The court may revoke or modify a disposition order and may order redispotion. The child whose disposition is being considered for revocation or modification at said hearing shall have the right to be represented by counsel, to present evidence in the child's behalf and to be confronted by witnesses against the child. Any revocation, modification or redispotion of the court in whole or in part shall be subject to review on appeal, as in other appeals of criminal cases. Bail may be allowed pending appeal.

SECTION 2. AMENDATORY Section 20, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 25, Chapter 293, O.S.L. 1997 (10 O.S. Supp. 1999, Section 7306-2.3), is amended to read as follows:

Section 7306-2.3 A. 1. A child who is charged with having violated any state statute or municipal ordinance other than as provided in Sections 7306-2.5 and 7306-2.6 of this title shall not be tried in a criminal action as an adult or a youthful offender, but in a juvenile proceeding, unless certified as an adult pursuant to Section 7303-4.3 of this title.

2. However, when multiple offenses occur within the same course of conduct within the same county and the person is prosecuted for at least one offense as a youthful offender pursuant to Section 7306-2.5 or 7306-2.6 of this title, then all the charges may be prosecuted under the same action pursuant to the provisions of the Youthful Offender Act, if so ordered by the court. The decision to join the cases shall not be appealable as a final order. If the offense listed in Section 7306-2.5 or Section 7306-2.6 of this title is subsequently dismissed for any reason, then any remaining pending charges shall be transferred to the juvenile court.

B. 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.

C. Nothing in this section 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 the child is charged with the violation of a state or municipal traffic law or ordinance.

SECTION 3. 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.

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. If no such county jail is available, then such person may be detained at a juvenile detention facility.

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 4. 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~~ any motions for certification as a youthful offender or a juvenile before the start of the criminal preliminary hearing. If both a motion for certification as a youthful offender and a motion for certification as a juvenile are filed, they shall both be filed at the same time. No motion for certification as a youthful offender or certification as a juvenile may be filed after the time specified in this subsection. 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. The court shall conduct a preliminary hearing within ninety (90) days of the charging of the accused person, pursuant to Section 258 of Title 22 of the Oklahoma Statutes, to determine whether the

crime was committed and whether there is probable cause to believe the accused person committed the crime.

3. At the conclusion of the state's case at the criminal preliminary hearing, the state and the accused person may offer evidence to support or oppose the ~~motion~~ motions for certification as a youthful offender or a juvenile.

D. The court shall rule on the any motions for certification ~~motion of the accused person~~ as a youthful offender or juvenile before ruling on whether to bind the accused over for trial. When ruling on the a motion for certification ~~motion of the accused person~~ as a youthful offender or 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 a motion for certification ~~motion of the accused person, need not~~ as a youthful offender or 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. ~~An~~ The 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 to the Court of Criminal Appeals when entered.

F. An order certifying the accused person as a youthful offender or juvenile shall not be reviewable by the trial court.

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 5. 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,

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. 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. A criminal preliminary hearing shall be held within ninety (90) days of the charging of the accused person.

F. 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.~~ G. 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 6. 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) more than thirty (30) days prior to the trial~~ following formal arraignment; or

2. ~~At the time of a guilty plea or plea of nolo contendere~~ If, prior to that time, the accused person indicates to the court that the accused person wishes to plead guilty, the court shall grant the state ten (10) days from that date to file the motion required by this subsection, if requested by the state.

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. 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.~~ G. 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 7. 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 make one of 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~~ or

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 8. 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 10 of Enrolled House Bill No. 2169 of the 2nd Session of the 47th Oklahoma Legislature, 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~~ shall schedule a ~~semiannual~~ annual 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 the entire file and record of the case, including docket sheets, index entries, court records, summonses, 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~~ Proceed as provided in Section 991a of Title 22 of the Oklahoma Statutes and impose the remainder of the sentence as provided by law for an adult punishment of the offense committed subject to the authority of the court to suspend or delay sentence, defer judgment 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 as shown by clear and convincing evidence,
- d. failed substantially to comply with ~~a~~ the previously adopted written plan of rehabilitation,
- e. except as provided by paragraph 6 of this subsection, been unable, due to the age of the youthful offender, to substantially comply with a written plan of rehabilitation, or
- f. failed substantially to comply with a written plan of rehabilitation or 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 placed in an institution or other long-term staff secure facility.

The court, in its decision to 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; or

6. Upon motion of the Department of Juvenile Justice and after notice to the youthful offender, extend jurisdiction and authorize the Department to retain custody or supervision of the youthful offender until the youthful offender reaches twenty (20) years of age, provided at the time of the hearing, the youthful offender:

- a. is within the thirty (30) days immediately preceding the nineteenth birthday of the youthful offender,
- b. is residing in an independent living arrangement, in the home of a relative or in a foster home, and

- c. is demonstrating progress toward complying with the previously adopted plan of rehabilitation and needs additional time to complete the plan.

During this period of extended jurisdiction, the court may proceed as provided in paragraph 5 of subsection F of this section or dismiss the charge as provided in paragraph 1 of subsection F of this section.

G. All persons sentenced as a youthful offender and placed in the custody or under the supervision of the Department of Juvenile Justice of the Office of Juvenile Affairs shall be discharged or transferred to the custody of the Department of Corrections, as provided in subsection D, when the youthful offender becomes eighteen (18) years of age unless the Office of Juvenile Affairs is authorized by the court to retain custody or supervision of the person until nineteen (19) years of age unless otherwise provided by law.

H. An order 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.

I. 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 9. 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 10. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. There is hereby created until February 1, 2001, the Task Force on Services to Older Youthful Offenders.

B. The Task Force shall be composed of nine (9) members as follows:

1. A representative of the Office of Juvenile Affairs;
2. A representative of the Oklahoma District Attorneys Council;
3. A representative of the Oklahoma Department of Corrections;
4. One person appointed by the Governor;

5. One person appointed by the Court of Criminal Appeals who shall be a criminal defense attorney, experienced in the representation of juveniles;

6. Two members of the Oklahoma House of Representatives, one of whom shall be a Republican and one of whom shall be a Democrat, to be appointed by the Speaker of the House of Representatives; and

7. Two members of the Oklahoma State Senate, one of whom shall be a Republican and one of whom shall be a Democrat, to be appointed by the President Pro Tempore of the Senate.

C. The chair shall be appointed by the Speaker of the House of Representatives on or before August 1, 2000. The vice-chair shall be appointed by the President Pro Tempore of the Senate. The chair shall convene the first meeting of the Task Force on or before September 1, 2000. The members of the Task Force shall elect any other officers during the first meeting and upon a vacancy in any office. The Task Force shall meet as often as necessary. Task Force members employed by the state shall be reimbursed travel expenses related to their service on the Task Force by their respective agencies pursuant to the provisions of the State Travel Reimbursement Act. Legislative members of the Task Force shall be reimbursed for their necessary travel expenses incurred in the performance of their duties in accordance with Section 456 of Title

74 of the Oklahoma Statutes. Remaining Task Force members shall be reimbursed travel expenses related to their service on the Task Force by their appointing authorities pursuant to the provisions of the State Travel Reimbursement Act.

D. Administrative support for the Task Force, including, but not limited to, personnel necessary to ensure the proper performance of the duties and responsibilities of the Task Force, shall be provided by the staff of the House of Representatives and the Senate. All participating state agencies shall provide for any administrative support requested by the Task Force.

E. The Task Force shall:

1. Make recommendations regarding the cooperative and coordinated delivery of services to older youthful offenders. In making such recommendations, the Task Force shall conduct a review which includes, but is not limited to:

- a. identification of all services currently offered and persons actually served,
- b. identification of barriers to services,
- c. assessment of the quality of services offered and recommendations to improve the quality of services offered,
- d. the extent of duplication of effort between state agencies and recommendations for integration and appropriate streamlining of service delivery,
- e. cost analysis of provided services,
- f. analysis of how to fund adequate services while ensuring quality,
- g. identification of any other problem areas related to the Youthful Offender Act, and
- h. recommendations for development of a system to deliver services to older youthful offenders; and

2. Submit any legislative proposals necessary to implement the findings of the Task Force on or before December 1 of each year.

F. The Task Force shall make a report to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the appropriate committees of the State Senate and the House of Representatives by January 1, 2001. The report shall be prepared by the administrative staff of the affected agencies.

SECTION 11. This act shall become effective July 1, 2000.

SECTION 12. 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.

Passed the House of Representatives the 25th day of May, 2000.

Speaker of the House of
Representatives

Passed the Senate the 25th day of May, 2000.

President of the Senate