

ENGROSSED

Senate Bill No. 268
As Amended

ENGROSSED SENATE BILL NO. 268 -- By WILKERSON of the Senate and SMITH (Dale) and WEAVER of the House.

An Act relating to juvenile crime; amending 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. 1998, Section 7306-2.6), which relates to youthful offender crimes; expanding list of crimes for which a juvenile may be charged as a youthful offender; amending 21 O.S. 1991, Section 650.2, as last amended by Section 4, Chapter 333, O.S.L. 1997 (21 O.S. Supp. 1998, Section 650.2), which relates to aggravated assault and battery upon protected status individuals; deleting element of crime; and providing an effective date.

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

SECTION 1. 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. 1998, 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; ~~or~~

13. Assault and battery or aggravated assault and battery prohibited in Section 650.2 of Title 21 of the Oklahoma Statutes if committed upon the person of an employee of a maximum secure unit of a secure facility as defined in Section 7301-1.3 of this title.

shall be held accountable for his or her 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,

shall be held accountable for his or her 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 certification of the accused person the court need not detail responses to each of the above considerations, but shall state that the court has considered each of the guidelines in reaching its decision.

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, the juvenile may be incarcerated with the adult population.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 650.2, as last amended by Section 4, Chapter 333, O.S.L. 1997 (21 O.S. Supp. 1998, Section 650.2), is amended to read as follows:

Section 650.2 A. Every person in the custody of the Oklahoma Department of Corrections who, without justifiable or excusable cause, knowingly commits any aggravated assault and battery upon the person of a Department of Corrections employee while said employee is in the performance of his or her duties shall, upon conviction thereof, be guilty of a felony.

B. Every person incarcerated in an institution operated by a private prison contractor, either pursuant to Section 561 or 563.1 of Title 57 of the Oklahoma Statutes, who, without justifiable or excusable cause, knowingly commits any aggravated assault and battery upon the person of an employee of the contractor while said employee is in the performance of duties shall, upon conviction thereof, be guilty of a felony.

C. Every person in the custody of the Department of Human Services who, without justifiable or excusable cause, knowingly commits any aggravated assault and battery upon the person of a Department of Human Services employee while said employee is in the performance of his or her duties shall, upon conviction thereof, be guilty of a felony.

D. Every person in the custody of the Office of Juvenile Affairs who, without justifiable or excusable cause, knowingly commits any aggravated assault and battery upon the person of an Office of Juvenile Affairs employee while said employee is in the performance of his or her duties shall, upon conviction thereof, be guilty of a felony.

E. Every person in the custody of the Office of Juvenile Affairs who, without justifiable or excusable cause, knowingly commits any battery or assault and battery resulting in ~~serious~~ bodily injury to any employee of the Office of Juvenile Affairs or employee of any residential facility while said employee is in the performance of duties of employment shall, upon conviction thereof, be guilty of a felony. The fine for a violation of this subsection shall not be less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), which may be imposed whether or not a period of incarceration is imposed.

SECTION 3. This act shall become effective November 1, 1999.