

ENROLLED SENATE
BILL NO. 1760

By: Riley of the Senate

and

Morgan (Danny), Duncan,
Nance, Ingmire, Cooksey,
DePue, Martin, Richardson,
Roggow, Terrill and Wright
of the House

An Act relating to juveniles; amending 10 O.S. 2001, Sections 7306-2.2 and 7306-2.5, which relate to the Youthful Offender Act; modifying age limitation for certain crime; providing adult status for certain persons charged with certain crime; providing statutory rights and protections; making subsequent offenses adult offenses; modifying age limitation for certain definition; modifying age limitation for adult status; providing gender-neutral language; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7306-2.2, is amended to read as follows:

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

1. "Youthful offender" means a person:
 - a. thirteen (13), or fourteen (14), ~~fifteen (15), sixteen (16) or seventeen (17)~~ years of age who is charged with murder in the first degree and certified as a youthful offender as provided by Section 7306-2.5 of this title,
 - b. fifteen (15), sixteen (16), or seventeen (17) years of age and charged with a crime listed in subsection A of Section 7306-2.6 of this title, and
 - c. sixteen (16) or seventeen (17) years of age and charged with a crime listed in subsection B of Section 7306-2.6 of this title,

if the offense was committed on or after January 1, 1998; and

2. "Sentenced as a youthful offender" means the imposition of a court order making disposition of a youthful offender as provided by Section 7306-2.9 of this title which shall constitute an adult criminal sentence if the youthful offender is transferred to the custody or supervision of the Department of Corrections pursuant to paragraph 5 of subsection F of Section 7306-2.10 of this title.

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

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7306-2.5, is amended to read as follows:

Section 7306-2.5 A. Any person ~~thirteen (13), or 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~~ or her act as if ~~he were~~ the person was 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. Any person fifteen (15), sixteen (16) or seventeen (17) years of age who is charged with murder in the first degree at that time shall be held accountable for his or her act as if the person was an adult and shall not be subject to the provisions of the Youthful Offender Act or the provisions of the Juvenile Code for certification as a juvenile. The person shall have all the statutory 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. A person having been convicted as an adult pursuant to this paragraph shall be tried as an adult for every subsequent offense.

C. 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.~~ D. 1. The accused person shall file 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 motions for certification as a youthful offender or a juvenile.

~~D.~~ E. The court shall rule on any motions for certification as a youthful offender or juvenile before ruling on whether to bind the accused over for trial. When ruling on a motion for certification 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~~ the capability of distinguishing right from wrong as determined by consideration of ~~his~~ a 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~~ such person 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 a motion for certification as a youthful offender or juvenile, shall detail findings of fact and conclusions of law to each of the above considerations, and shall state that the court has considered each of the guidelines in reaching its decision.

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

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

SECTION 3. This act shall become effective July 1, 2006.

SECTION 4. 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 Senate the 24th day of May, 2006.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of May, 2006.

Presiding Officer of the House
of Representatives