

3 Senate Bill No. 1765
4 As Amended

5 SENATE BILL NO. 1765 - By: RILEY and EASON McINTYRE of the Senate
6 and MORGAN (Danny) of the House.

7 [juveniles - youthful offender proceedings - effective
8 date -
9 emergency]

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

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

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

15 1. "Youthful offender" means a person:

- 16 a. thirteen (13), fourteen (14), fifteen (15), sixteen
17 (16) or seventeen (17) years of age who is charged
18 with murder in the first degree and certified as a
19 youthful offender as provided by Section 7306-2.5 of
20 this title,
21 b. fifteen (15), sixteen (16), or seventeen (17) years of
22 age and charged with a crime listed in subsection A of
23 Section 7306-2.6 of this title, and

1 c. sixteen (16) or seventeen (17) years of age and
2 charged with a crime listed in subsection B of Section
3 7306-2.6 of this title,

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

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

11 3. "Next friend" means an individual or executive of an
12 organization who has assumed a parental role without formal legal
13 proceedings, but to all objective observers is readily identified as
14 custodian or guardian in fact.

15 B. It is the purpose of the Youthful Offender Act to better
16 ensure the public safety by holding youths accountable for the
17 commission of serious crimes, while affording courts methods of
18 rehabilitation for those youths the courts determine, at their
19 discretion, may be amenable to such methods. It is the further
20 purpose of the Youthful Offender Act to allow those youthful
21 offenders whom the courts find to be amenable to rehabilitation by
22 the methods prescribed in the Youthful Offender Act to be placed in
23 the custody or under the supervision of the Office of Juvenile

1 Affairs for the purpose of accessing the rehabilitative programs
2 provided by that Office and thereby, upon good conduct and
3 successful completion of such programs, avoid conviction for a
4 crime.

5 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7306-2.4, is
6 amended to read as follows:

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

12 B. When a person is certified to stand trial as an adult or a
13 youthful offender as provided by the Youthful Offender Act, the
14 accused person shall have all the statutory and constitutional
15 rights and protections of an adult accused of a crime. All
16 proceedings shall be as for a criminal action and the provisions of
17 Title 22 of the Oklahoma Statutes shall apply, except as provided
18 for in the Youthful Offender Act. All youthful offender court
19 records for such a person shall be considered adult records and
20 shall not be subject to the provisions of Article VII of the
21 Oklahoma Juvenile Code.

22 C. Proceedings against a youthful offender shall be heard by
23 any judge of the district court.

1 D. Upon arrest and detention of a person subject to the
2 provisions of Section 7306-2.5 or 7306-2.6 of this title, the person
3 has the same right to be released on bail as would an adult in the
4 same circumstances and, if detained, may be detained in a county
5 jail if separated by sight and sound from the adult population as
6 otherwise authorized by law. If no such county jail is available,
7 then such person may be detained at a juvenile detention facility.
8 The sheriff, chief of police, or juvenile or adult detention
9 facility operator shall forthwith notify the Department of Juvenile
10 Justice of any such arrest and detention.

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

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

20 1. The child or youthful offender has been certified to stand
21 trial as an adult pursuant to any certification procedure provided
22 by law and is subsequently convicted of the alleged offense or

1 against whom the imposition of judgment and sentence has been
2 deferred; or

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

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

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

15 H. When a person who has been sentenced as a youthful offender
16 is placed in the custody or under the supervision of the Office of
17 Juvenile Affairs, if the youthful offender has not been previously
18 discharged by the court from the custody or supervision of the
19 Office of Juvenile Affairs, within the thirty (30) days immediately
20 preceding the date on which the youthful offender becomes eighteen
21 (18) years of age, or if extended by the court, nineteen (19) years
22 of age, the court shall hold a review hearing and shall make further

1 orders regarding the youthful offender as provided by Section 7306-
2 2.10 of this title.

3 SECTION 3. AMENDATORY 10 O.S. 2001, Section 7306-2.5, is
4 amended to read as follows:

5 Section 7306-2.5 A. Any person thirteen (13), fourteen (14),
6 fifteen (15), sixteen (16) or seventeen (17) years of age who is
7 charged with murder in the first degree shall be held accountable
8 for ~~his acts~~ the act as if ~~he~~ the person were an adult; provided,
9 the person may be certified as a youthful offender or a juvenile as
10 provided by this section, unless the person is subject to the
11 provisions of subsection F of Section 7306-2.4 of this title.

12 B. 1. Upon the filing of an adult criminal information against
13 such accused person, a warrant shall be issued which shall set forth
14 the rights of the accused person, and the rights of the parents,
15 guardian or next friend of the accused person to be present at the
16 preliminary hearing, to have an attorney present and to make
17 application for certification of such accused person as a youthful
18 offender to the district court for the purpose of prosecution as a
19 youthful offender.

20 2. The warrant shall be personally served together with a
21 certified copy of the information on the accused person and on a
22 custodial parent, guardian or next friend of the accused person.
23 The court may inquire of the accused as to the whereabouts of his or

1 her parents, guardian, or next friend in order to avoid unnecessary
2 delay in the proceedings.

3 3. When personal service of a custodial parent, guardian or
4 next friend of the accused person cannot be effected, service may be
5 made by certified mail to such person's last-known address,
6 requesting a return receipt from the addressee only. If delivery is
7 refused, notice may be given by mailing the warrant and a copy of
8 the information on the accused person by regular first-class mail to
9 the address where the person to be notified refused delivery of the
10 notice sent by certified mail. Where the address of a custodial
11 parent, guardian or next friend is not known, or if the mailed
12 warrant and copy of the information on the accused person is
13 returned for any reason other than refusal of the addressee to
14 accept delivery, after a thorough search of all reasonably available
15 sources to ascertain the whereabouts of a custodial parent, guardian
16 or next friend has been conducted, the court may order that notice
17 of the hearing be given by publication one time in a newspaper of
18 general circulation in the county. In addition, the court may order
19 other means of service of notice that the court deems advisable or
20 in the interests of justice.

21 4. Before service by publication is ordered, the court shall
22 conduct an inquiry to determine whether a thorough search has been

1 made of all reasonably available sources to ascertain the
2 whereabouts of any party for whom notice by publication is sought.

3 C. 1. The accused person shall file any motions for
4 certification as a youthful offender or a juvenile before the start
5 of the criminal preliminary hearing. If both a motion for
6 certification as a youthful offender and a motion for certification
7 as a juvenile are filed, they shall both be ~~filed~~ heard at the same
8 time. No motion for certification as a youthful offender or
9 certification as a juvenile may be filed after the time specified in
10 this subsection. Upon the filing of such motion, the complete
11 juvenile record of the accused shall be made available to the
12 district attorney and the accused person.

13 2. The court shall ~~conduct~~ commence a preliminary hearing
14 within ninety (90) days of the ~~charging of the accused person~~ filing
15 of the information, pursuant to Section 258 of Title 22 of the
16 Oklahoma Statutes, to determine whether the crime was committed and
17 whether there is probable cause to believe the accused person
18 committed ~~the~~ a crime. If the preliminary hearing is not commenced
19 within ninety (90) days of the date the accused person is charged,
20 the district court shall hold a hearing to determine the reasons for
21 delay utilizing the procedure set out in Section 812.2 of Title 22
22 of the Oklahoma Statutes, to ensure the preliminary hearing is
23 expedited. If the whereabouts of the accused are unknown at the

1 time of the filing of the information or if the accused is a
2 fugitive, the State of Oklahoma shall make reasonable efforts to
3 locate the accused in order to commence the proceedings. An accused
4 who flees the jurisdiction of the court or purposely avoids
5 apprehension for the charges, waives the right to have the
6 preliminary hearing commenced within ninety (90) days of the filing
7 of the information. An accused who fails to cooperate with
8 providing information in locating the parents of the accused,
9 guardian, or next friend for purpose of notice waives the right to
10 have the preliminary hearing commence within ninety (90) days of the
11 filing of the information.

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

16 D. The court shall rule on any motions for certification as a
17 youthful offender or an alleged juvenile delinquent before ruling on
18 whether to bind the accused over for trial. When ruling on a motion
19 for certification as a youthful offender or juvenile, the court
20 shall give consideration to the following guidelines with greatest
21 weight to be given to paragraphs 1, 2 and 3:

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

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

3 3. The record and past history of the accused person, including
4 previous contacts with law enforcement agencies and juvenile or
5 criminal courts, prior periods of probation and commitments to
6 juvenile institutions;

7 4. The sophistication and maturity of the accused person and
8 ~~his~~ the capability of distinguishing right from wrong as determined
9 by consideration of ~~his~~ the person's psychological evaluation, home,
10 environmental situation, emotional attitude and pattern of living;

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

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

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

21 The court, in its decision on a motion for certification as a
22 youthful offender or juvenile, shall detail findings of fact and
23 conclusions of law to each of the above considerations, and shall

1 state that the court has considered each of the guidelines in
2 reaching its decision.

3 E. The order certifying a person as a youthful offender or ~~a~~ an
4 alleged juvenile delinquent or denying the request for certification
5 as either a youthful offender or ~~a~~ an alleged juvenile delinquent
6 shall be a final order, appealable to the Court of Criminal Appeals
7 when entered.

8 F. An order certifying the accused person as a youthful
9 offender or an alleged juvenile delinquent shall not be reviewable
10 by the trial court.

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

16 SECTION 4. AMENDATORY 10 O.S. 2001, Section 7306-2.6, is
17 amended to read as follows:

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

- 20 1. Murder in the second degree;
- 21 2. Kidnapping ~~for the purpose of extortion;~~
- 22 3. Manslaughter in the first degree;
- 23 4. Robbery with a dangerous weapon or attempt thereof;

1 5. Robbery with a firearm or attempt thereof;
2 6. Rape in the first degree or attempt thereof;
3 7. Rape by instrumentation or attempt thereof;
4 8. Forcible sodomy;
5 9. Lewd molestation;
6 10. Arson in the first degree or attempt thereof; or
7 11. ~~Shooting with intent to kill; or~~
8 12. ~~Discharging a firearm, crossbow or other weapon from a~~
9 ~~vehicle pursuant to subsection B of Section 652 of Title 21 of the~~
10 ~~Oklahoma Statutes~~ Any offense in violation of Section 652 of Title
11 21 of the Oklahoma Statutes, shall be held accountable for his acts
12 as a youthful offender.

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

15 1. Burglary in the first degree or attempted burglary in the
16 first degree;
17 2. Aggravated assault and battery of a police officer;
18 3. Intimidating a witness;
19 4. Trafficking in or manufacturing illegal drugs;
20 5. Assault or assault and battery with a deadly weapon;
21 6. Maiming;
22 7. Residential burglary in the second degree after two or more
23 adjudications that are separated in time for delinquency for

1 committing burglary in the first degree or residential burglary in
2 the second degree;

3 8. Rape in the second degree; or

4 9. Use of a firearm while in commission of a felony,

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

6 C. ~~Except as provided in subsection C of Section 7306-2.4 of~~
7 ~~this title, after a preliminary inquiry conducted by the Department~~
8 ~~of Juvenile Justice or a juvenile bureau, whichever is applicable~~
9 ~~for the county, the~~ The district attorney may file a petition
10 alleging the person to be a delinquent or may file an information
11 against the accused person charging the person as a youthful
12 offender. The district attorney shall notify the Department of
13 Juvenile Justice upon the filing of youthful offender charges.

14 D. 1. Upon the filing of the information against such alleged
15 youthful offender, a warrant shall be issued which shall set forth
16 the rights of the accused person, and the rights of the parents,
17 guardian or next friend of the accused person to be present at the
18 preliminary hearing, and to have an attorney present.

19 2. The warrant shall be personally served together with a
20 certified copy of the information on the alleged youthful offender
21 and on a custodial parent, guardian or next friend of the accused
22 person.

1 3. When personal service of a custodial parent, guardian or
2 next friend of the alleged youthful offender cannot be effected,
3 service may be made by certified mail to such person's last-known
4 address, requesting a return receipt from the addressee only. If
5 delivery is refused, notice may be given by mailing the warrant and
6 a copy of the information on the accused person by regular first-
7 class mail to the address where the person to be notified refused
8 delivery of the notice sent by certified mail. Where the address of
9 a custodial parent, guardian or next friend is not known, or if the
10 mailed warrant and copy of the information on the accused person is
11 returned for any reason other than refusal of the addressee to
12 accept delivery, after a distinct and meaningful search of all
13 reasonably available sources to ascertain the whereabouts of a
14 custodial parent, guardian or next friend has been conducted, the
15 court may order that notice of the hearing be given by publication
16 one time in a newspaper of general circulation in the county. In
17 addition, the court may order other means of service of notice that
18 the court deems advisable or in the interests of justice.

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

1 E. ~~A criminal preliminary hearing shall be held within ninety~~
2 ~~(90) days of the charging of the accused person~~ The court shall
3 commence a preliminary hearing within ninety (90) days of the filing
4 of the information pursuant to Section 258 of Title 22 of the
5 Oklahoma Statutes, to determine whether the crime was committed and
6 whether there is probable cause to believe the accused person
7 committed the crime. If the preliminary hearing is not commenced
8 within ninety (90) days, the State shall be prohibited from seeking
9 an adult sentence unless the ninety (90) day requirement is waived
10 by the defendant. If the whereabouts of the accused are unknown at
11 the time of the filing of the information or if the accused is a
12 fugitive, the State of Oklahoma shall make reasonable efforts to
13 locate the accused in order to commence the proceedings. An accused
14 who flees the jurisdiction of the court or purposely avoids
15 apprehension for the charges, waives the right to have the
16 preliminary hearing commenced within ninety (90) days of the filing
17 of the information. An accused who fails to cooperate with
18 providing information in locating the accused parent, guardian, or
19 next friend for purpose of notice waives the right to have the
20 preliminary hearing commence within ninety (90) days of the filing
21 of the information.

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

4 a. upon the filing of such motion, the complete juvenile
5 record of the accused shall be made available to the
6 district attorney and the accused person,

7 b. at the conclusion of the state's case at the criminal
8 preliminary hearing, the accused person may offer
9 evidence to support the motion for certification as a
10 child.

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

16 3. The court shall rule on the certification motion before
17 ruling on whether to bind the accused over for trial. When ruling
18 on the certification motion, the court shall give consideration to
19 the following guidelines with the greatest weight given to
20 subparagraphs a, b and c:

21 a. ~~the seriousness of the alleged offense to the~~
22 ~~community, and whether the alleged offense was~~
23 ~~committed in an aggressive, violent, premeditated or~~

1 ~~willful manner~~ whether the alleged offense was
2 committed in an aggressive, violent, premeditated or
3 willful manner,
4 b. ~~whether the offense was against persons or property,~~
5 ~~greater weight being given to offenses against~~
6 ~~persons,~~ and if personal injury resulted, the degree
7 of personal injury,
8 c. ~~the sophistication and maturity of the juvenile and~~
9 ~~his capability of distinguishing right from wrong as~~
10 ~~determined by consideration of his psychological~~
11 ~~evaluation, home, environmental situation, emotional~~
12 ~~attitude and pattern of living~~ record and past history
13 of the accused person, including previous contacts
14 with law enforcement agencies and juvenile or criminal
15 courts, prior periods of probation and commitments to
16 juvenile institutions,
17 d. ~~the record and previous history of the accused person,~~
18 ~~including previous contacts with community agencies,~~
19 ~~law enforcement agencies, schools, juvenile courts and~~
20 ~~other jurisdictions, prior periods of probation or~~
21 ~~prior commitments to juvenile institutions~~
22 sophistication and maturity of the accused person and
23 the capability of distinguishing right from wrong as

1 determined by consideration of the accused person's
2 psychological evaluation, home, environmental
3 situation, emotional attitude and pattern of living,
4 e. the prospects for adequate protection of the public if
5 the accused person is processed through the youthful
6 offender system or the juvenile system,
7 f. the reasonable likelihood of ~~reasonable~~ rehabilitation
8 of the ~~juvenile~~ accused person if ~~he~~ the accused is
9 found to have committed the alleged offense, by the
10 use of procedures and facilities currently available
11 to the juvenile court, and
12 g. whether the offense occurred while the accused person
13 was escaping or in an escape status from an
14 institution for ~~delinquent children~~ youthful offenders
15 or juvenile delinquents.

16 4. In its decision on the motion for certification as ~~a~~ an
17 alleged juvenile delinquent, the court shall detail findings of fact
18 and conclusions of law to each of the above considerations and shall
19 state that the court has considered each of the guidelines in
20 reaching its decision.

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

1 G. Upon conviction, sentence may be imposed as a sentence for a
2 youthful offender as provided by Section 7306-2.9 of this title. If
3 the youthful offender sentence is imposed as an adult sentence as
4 provided by Section 7306-2.8 of this title, the juvenile convicted
5 person may be incarcerated with the adult population.

6 SECTION 5. AMENDATORY 10 O.S. 2001, Section 7306-2.8, is
7 amended to read as follows:

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

16 1. Not more than thirty (30) days following formal arraignment
17 and such motion will be ruled upon by the trial court; or the
18 district attorney may file the motion to impose adult sentence
19 fourteen (14) days prior to the start of the preliminary hearing and
20 the preliminary hearing magistrate will rule on that motion. The
21 district attorney must elect when to file the motion for adult
22 sentence and if the motion is filed and argued to the magistrate, it

1 cannot again be filed and argued to the trial court after
2 arraignment; or

3 2. If, prior to that time, the accused person indicates to the
4 court that the accused person wishes to plead guilty or nolo
5 contendere, the court shall grant the state ten (10) days from that
6 date to file the motion required by this subsection, if requested by
7 the state.

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

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

15 2. At the hearing the court shall consider, with the greatest
16 weight given to subparagraphs a, b and c:

- 17 a. ~~the seriousness of the alleged offense to the~~
18 ~~community, and~~ whether the offense was committed in an
19 aggressive, violent, premeditated or willful manner,
20 b. whether the offense was against persons ~~or property,~~
21 ~~greater weight being given for offenses against~~
22 ~~persons~~ and, if personal injury resulted, the degree
23 of injury,

- 1 c. ~~the sophistication and maturity of the accused person~~
2 ~~and his capability of distinguishing right from wrong~~
3 ~~as determined by consideration of his psychological~~
4 ~~evaluation, home, environmental situation, emotional~~
5 ~~attitude and pattern of living~~ record and past history
6 of the accused person, including previous contacts
7 with law enforcement agencies and juvenile or criminal
8 courts, prior periods of probation and commitments to
9 juvenile institutions,
- 10 d. ~~the record of the person including previous~~
11 ~~involvements with law enforcement agencies or courts,~~
12 ~~or prior periods of probation or prior commitments to~~
13 ~~institutions for delinquent behavior, and the previous~~
14 ~~history of the person with community agencies and~~
15 ~~schools~~ sophistication and maturity of the accused
16 person and the accused person's capability of
17 distinguishing right from wrong as determined by
18 consideration of the accused person's psychological
19 evaluation, home, environmental situation, emotional
20 attitude and pattern of living,
- 21 e. the prospects for adequate protection of the public if
22 the accused person is processed through the youthful
23 offender system or the juvenile system,

1 f. the reasonable likelihood of ~~reasonable~~ rehabilitation
2 of the ~~youthful offender~~ accused person if ~~he~~ the
3 accused person is found to have committed the alleged
4 offense, by the use of procedures and facilities
5 currently available to the juvenile court ~~if the~~
6 ~~accused person is processed through the youthful~~
7 ~~offender system~~, and

8 g. whether the offense occurred while the accused person
9 was escaping or on escape status from a ~~secure~~
10 ~~facility~~ an institution for youthful offenders or
11 delinquent children.

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

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

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

4 F. If the person has been certified as eligible to be sentenced
5 as an adult, the court shall, upon a verdict of guilty or the entry
6 of a plea of guilty or nolo contendere, impose sentence as provided
7 by law for an adult for punishment of the offense committed, subject
8 to the power and authority of the court to suspend or delay
9 sentence, defer judgment, or otherwise structure, limit, or modify
10 sentence as provided in Title 22 of the Oklahoma Statutes or the
11 Youthful Offender Act. When sentence is imposed pursuant to this
12 subsection, the person shall be treated as an adult for purposes of
13 supervision, incarceration and in all subsequent criminal
14 proceedings.

15 G. Upon a verdict of guilty or a plea of guilty or nolo
16 contendere, the court may order the person to pay a fee to the
17 Department of Juvenile Justice of not less than ~~Five Dollars (\$5.00)~~
18 Twenty-five Dollars (\$25.00), nor more than ~~Two Hundred Fifty~~
19 ~~Dollars (\$250.00)~~ Five Hundred Dollars (\$500.00), for the
20 presentence investigation. In hardship cases, the court may waive
21 the fee or set the amount of the fee and establish a payment
22 schedule.

1 SECTION 6. AMENDATORY 10 O.S. 2001, Section 7306-2.9, is
2 amended to read as follows:

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

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

12 2. The court shall conduct a hearing and shall consider, with
13 the greatest weight given to subparagraphs a, b and c:

- 14 a. whether the alleged offense was committed in an
15 aggressive, violent, premeditated or willful manner,
16 b. whether the offense was against persons ~~or property,~~
17 ~~greater weight being given to offenses against persons~~
18 ~~when~~ and, if personal injury resulted ~~and,~~ the degree
19 of personal injury,
20 c. ~~the sophistication and maturity of the juvenile and~~
21 ~~his capability of distinguishing right from wrong as~~
22 ~~determined by consideration of his psychological~~
23 ~~evaluation, home, environmental situation, emotional~~

1 ~~attitude and pattern of living~~ the record and past
2 history of the accused person, including previous
3 contacts with law enforcement agencies and juvenile or
4 criminal courts, prior periods of probation and
5 commitments to juvenile institutions,
6 d. ~~the record of the person including previous~~
7 ~~involvements with law enforcement agencies or courts,~~
8 ~~or prior periods of probation or prior commitments to~~
9 ~~institutions for delinquent behavior, and the previous~~
10 ~~history of the person with community agencies and~~
11 ~~schools~~ the sophistication and maturity of the accused
12 person and the accused person's capability of
13 distinguishing right from wrong as determined by
14 consideration of the accused person's psychological
15 evaluation, home, environmental situation, emotional
16 attitude and pattern of living,
17 e. the prospects for adequate protection of the public if
18 the accused person is processed through the youthful
19 offender system or the juvenile system,
20 f. the reasonable likelihood of ~~reasonable~~ rehabilitation
21 of the ~~youthful offender~~ accused person if found to
22 have committed the alleged offense, by the use of
23 procedures and facilities currently available to the

1 ~~court if the accused person is processed through the~~
2 ~~youthful offender system~~ juvenile, and

3 g. whether the offense occurred while the person was
4 escaping or on escape status from ~~a secure facility~~ an
5 institution for youthful offenders or delinquent
6 children.

7 B. 1. After the hearing and consideration of the report of the
8 presentence investigation, the court shall ~~impose sentence~~ defer
9 sentencing as a youthful offender within the range prescribed by law
10 for adult felony convictions except capital offenses. ~~In no event~~
11 ~~shall the sentence exceed the amount of time of a possible sentence~~
12 ~~for an adult convicted of the same offense or ten (10) years,~~
13 ~~whichever is less.~~

14 2. The court may make one of the following dispositional orders
15 regarding a youthful offender:

16 ~~1. Place~~ a. place the youthful offender under the
17 supervision of the Office of Juvenile Affairs through
18 its Department of Juvenile Justice~~;~~ 1 or

19 ~~2. Place~~ b. place the youthful offender in the custody
20 of the Office of Juvenile Affairs.

21 3. It is the intent of the Oklahoma Legislature that youthful
22 offenders be held insofar as is practical separate from the juvenile
23 delinquent population.

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

6 SECTION 7. AMENDATORY 10 O.S. 2001, Section 7306-2.10,
7 is amended to read as follows:

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

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

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

19 3. ~~The~~ Identify the specific services and programs that will be
20 provided to the youthful offender by the Department of Juvenile
21 Justice to assist the youthful offender to achieve the measurable
22 objectives to be reached, including but not limited to, diagnostic
23 testing consistent with the current standards of medical practice.

1 The rehabilitation plan shall be tailored to the needs and goals of
2 the youthful offender while ensuring protection of the public while
3 the offender is in the custody or supervision of the Office of
4 Juvenile Affairs.

5 B. Whenever a youthful offender is placed in the custody or
6 under the supervision of the Office of Juvenile Affairs as provided
7 by the Youthful Offender Act, the court shall conduct a semiannual
8 review based upon written reports of the youth's conduct, progress
9 and condition. Written reports concerning the conduct, progress and
10 condition of a youthful offender shall be submitted to the court
11 prior to scheduled reviews by the Department of Juvenile Justice.
12 Such reports shall include a written report of the youthful offender
13 with respect to the rehabilitation plan. Copies of those reports
14 shall be provided by the agency to the youthful offender, ~~his~~ such
15 person's counsel, parent or guardian if the youthful offender is
16 less than eighteen (18) years of age, and the district attorney.
17 The court shall consider any timely written response to the agency
18 report before concluding its review.

19 C. The court shall schedule ~~an annual~~ a semi-annual review
20 hearing in open court, after notice, at its discretion and may
21 schedule such other hearings, after notice, as the court deems
22 necessary. The court shall hold a review hearing for good cause
23 shown, upon the motion of the district attorney, the Department of

1 Juvenile Justice, or the youthful offender for the purpose of making
2 a determination as to:

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

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

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

15 E. A review hearing shall be conducted in open court ~~after~~
16 following notice to the ~~youth~~ offender, his or to such person's
17 counsel, parent or guardian if the youthful offender is less than
18 eighteen (18) years of age, the Department of Juvenile Justice, and
19 the appropriate district attorney shall also receive notice prior to
20 the review hearing.

21 F. At the conclusion of any review hearing in open court and
22 after consideration of all reports and other evidence properly
23 submitted to the court, the court may:

1 1. Order the youthful offender discharged from the supervision
2 or custody of the Department of Juvenile Justice without a court
3 judgment of guilt, and order the verdict or plea of guilty or plea
4 of nolo contendere expunged from the record as provided in
5 paragraphs 1 through 5 of subsection C of Section 991c of Title 22
6 of the Oklahoma Statutes and dismiss the charge with prejudice to
7 any further action if the court finds that the youthful offender has
8 reasonably completed the rehabilitation plan and objectives and that
9 such dismissal will not jeopardize public safety. If a youthful
10 offender has been discharged without a court order judgment of guilt
11 and the charge has been dismissed with prejudice as provided in this
12 paragraph, upon the motion of the youthful offender and three (3)
13 years after such discharge and dismissal, the court may, in
14 addition, order any law enforcement agency over which the court has
15 jurisdiction to produce all files and records pertaining to the
16 arrest and conviction of the youthful offender and shall order the
17 clerk of the court to destroy the entire file and record of the
18 case, including docket sheets, index entries, court records,
19 summonses, warrants or records in the office of the clerk or which
20 have been produced by a law enforcement agency in which the name of
21 the youthful offender is mentioned. The court may order probation
22 officers and counselors of the Office of Juvenile Affairs to destroy
23 all records, reports, and social and clinical studies relating to

1 the youthful offender that are in the possession of the Office of
2 Juvenile Affairs, except when the documents are necessary to
3 maintain state or federal funding;

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

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

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

13 5. Proceed as provided in Section 991a of Title 22 of the
14 Oklahoma Statutes and impose ~~the remainder of~~ the sentence as
15 provided by law for an adult punishment of the offense committed
16 subject to the authority of the court to suspend or delay sentence,
17 defer judgment or otherwise structure, limit or modify a sentence as
18 provided in Title 22 of the Oklahoma Statutes, including transfer of
19 the youthful offender to the custody or supervision of the
20 Department of Corrections ~~for the remainder of the youthful offender~~
21 ~~sentence~~, if the court finds by clear and convincing evidence that
22 the youthful offender has:

- 1 a. after conviction as a youthful offender, seriously
2 injured or endangered the life or health of another
3 person by ~~his~~ such person's violent behavior, or
4 b. escaped from a training school, or
5 c. committed a ~~felony~~ crime while in the custody or under
6 the supervision of the Department of Juvenile Justice
7 as shown by a judgment entered following a verdict of
8 guilty, a plea of guilty or nolo contendere, or as
9 shown by clear and convincing evidence, or
10 d. failed substantially to comply with the previously
11 adopted written plan of rehabilitation or failed to
12 substantially complete the reasonable treatment
13 objectives, or
14 e. ~~except as provided by paragraph 6 of this subsection,~~
15 ~~been unable, due to the age of the youthful offender,~~
16 ~~to substantially comply with a written plan of~~
17 ~~rehabilitation, or~~
18 f. ~~failed substantially to comply with a written plan of~~
19 ~~rehabilitation or failed substantially to achieve~~
20 ~~reasonable treatment objectives and is within thirty~~
21 ~~(30) days of his eighteenth birthday, or nineteenth~~
22 ~~birthday if custody has been extended, and is still~~

1 ~~placed in an institution or other long term staff~~
2 ~~secure facility~~
3 while in the custody or under the supervision of the
4 Office of Juvenile Affairs, committed battery or
5 assault and battery on a state employee or contractor.

6 The court, in its decision to transfer custody of the youthful
7 offender to the custody of the Department of Corrections shall
8 detail findings of fact and conclusions of law addressing the
9 grounds alleged in the motion of the state; or

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

- 16 a. is within the thirty (30) days immediately preceding
- 17 the nineteenth birthday of the youthful offender, and
- 18 b. has substantially complied with the previously adopted
- 19 plan of rehabilitation and needs additional time to
- 20 complete the plan.

21 During this period of extended jurisdiction, the court may proceed
22 as provided in paragraph 5 of subsection F of this section or

1 dismiss the charge as provided in paragraph 1 of subsection F of
2 this section.

3 G. All persons ~~sentenced~~ adjudicated as a youthful offender and
4 placed in the custody ~~or under the supervision~~ of the Department of
5 Juvenile Justice of the Office of Juvenile Affairs shall be
6 discharged or transferred to the custody of the Department of
7 Corrections, as provided in subsection D, within the thirty (30)
8 days immediately preceding the date on which the youthful offender
9 becomes eighteen (18) years of age, when the youthful offender
10 becomes eighteen (18) years of age unless the Office of Juvenile
11 Affairs is authorized by the court to retain custody ~~or supervision~~
12 of the person until nineteen (19) years of age unless otherwise
13 provided by law.

14 H. ~~An order transferring~~ Each judgment and sentence committing
15 a person who has previously been adjudicated a youthful offender and
16 subsequently sentenced as an adult pursuant to Sections 7306-2.8 of
17 Title 10 of the Oklahoma Statutes and paragraph F of this section
18 shall clearly identify the offender as having been previously
19 adjudicated a youthful offender and shall detail the history of the
20 application of the Youthful Offender Act resulting in the Department
21 of Corrections commitment. The history shall include, but not be
22 limited to, the date of the offense, the date of the adjudication as
23 a youthful offender, the date of the filing of the motion to bridge,

1 and the date of the imposition of the adult sentence. A judgment
2 and sentence ordering custody of a youthful an offender to the
3 Department of Corrections shall ~~result in~~ memorialize an adult
4 conviction and shall be a final order, appealable when entered.

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

13 SECTION 8. AMENDATORY 10 O.S. 2001, Section 7306-2.11,
14 is amended to read as follows:

15 Section 7306-2.11 A. Whenever a youthful offender is committed
16 to the custody of the Office of Juvenile Affairs, the Department of
17 Juvenile Justice may:

18 1. Place the youthful offender in a state training school or
19 other institution or facility maintained by the state for youthful
20 offenders;

21 2. Place the youthful offender in a group home or community
22 residential facility for youthful offenders;

1 3. Place the youthful offender under community supervision
2 prior to or after a period of placement in one or more of the
3 facilities referred to in paragraphs 1 and 2 of this subsection.
4 The Department of Juvenile Justice may place a youthful offender in
5 his or her own home, or an independent living or other similar
6 living arrangement within the community of the residence of the
7 youthful offender only upon the approval of the court; provided the
8 court shall not prohibit the reintegration of the youthful offender
9 into the community except upon finding that the youthful offender
10 has not reasonably completed the rehabilitation plan objectives
11 established as preconditions for reintegration into the community or
12 that the public would not be adequately protected if the youthful
13 offender is reintegrated into the community; or

14 4. Place the youthful offender in a sanction program if the
15 youthful offender fails to comply with a written plan of
16 rehabilitation or fails substantially to achieve reasonable
17 treatment objectives while in community or other nonsecure programs.

18 B. The Department of Juvenile Justice shall be responsible for
19 the care and control of a youthful offender placed in the custody of
20 the Office of Juvenile Affairs, and shall have the duty and the
21 authority to provide food, clothing, shelter, ordinary medical care,
22 education, discipline and in an emergency to authorize surgery or
23 other extraordinary care. Said medical care, surgery and

1 extraordinary care shall be charged to the appropriate agency where
2 the youthful offender qualifies for said care under law, rule,
3 regulation or administrative order or decision. Nothing in this
4 section shall abrogate the right of a youthful offender to any
5 benefits provided through public funds nor the parent's statutory
6 duty or responsibility to provide said necessities; further, no
7 person, agency or institution shall be liable in a civil suit for
8 damages for authorizing or not authorizing surgery or extraordinary
9 care in an emergency, as determined by competent medical authority.
10 A youthful offender placed in the custody of the Office of Juvenile
11 Affairs who has attained the age of eighteen (18) years of age or
12 older may authorize and consent to the medical care sought on behalf
13 of the youthful offender by the Office of Juvenile Affairs and to be
14 provided to the youthful offender by a qualified health care
15 professional. No state employee shall be liable for the costs of
16 any medical care or mental health services provided to any child in
17 the custody of the Office of Juvenile Affairs.

18 C. A youthful offender in the custody of the Office of Juvenile
19 Affairs shall:

20 1. Be entitled to all the rights afforded juvenile delinquents
21 pertaining to the conditions and restrictions in facilities where
22 delinquents may be placed, including any due process afforded

1 delinquents in regard to movement from a nonsecure to a secure
2 placement;

3 2. Have access to the same or comparable programs and services
4 available to a delinquent in the custody of or under the supervision
5 of the Office of Juvenile Affairs; and

6 3. As appropriate to the age and circumstances of the youthful
7 offender, be provided education, employment, and employment skills
8 and vocational and technical or higher education services,
9 apprenticeship programs and similar opportunities.

10 SECTION 9. AMENDATORY 10 O.S. 2001, Section 7306-2.12,
11 is amended to read as follows:

12 Section 7306-2.12 A. Upon the motion of a person who has been
13 convicted and sentenced as a youthful offender and who has been
14 subsequently transferred to the adult system pursuant to Section
15 7306-2.10 of this title, with the recommendation of the sentencing
16 court, the Governor may grant a full and complete pardon and restore
17 citizenship to any person who has been convicted and sentenced as a
18 youthful offender and who has completed the sentence or been
19 discharged from parole.

20 B. Upon the motion of a person convicted as a youthful
21 offender, and three (3) years after the expiration of the sentence
22 of the youthful offender, the court may set aside the conviction if:

1 1. The court has previously found that the person has
2 reasonably complied with the rehabilitation plan and objectives;

3 2. The person was discharged from supervision by the Office of
4 Juvenile Affairs, or was granted early discharge from such
5 supervision by the court; or

6 3. The person has completed the sentence imposed as a result of
7 his first conviction as a youthful offender and has no subsequent
8 convictions.

9 If a conviction is set aside pursuant to this subsection, the
10 youthful offender shall thereafter be released from all penalties
11 and disabilities resulting from the offense for which ~~he~~ such person
12 was convicted, including but not limited to, any disqualification
13 for any employment or occupational license, or both, created by any
14 other provision of law. The court may in addition order any law
15 enforcement agency over whom the court has jurisdiction to produce
16 all files and records pertaining to said arrest and conviction of
17 the youthful offender and shall order the clerk of the court to
18 destroy the entire file and record of the case, including docket
19 sheets, index entries, court records, summons, warrants or records
20 in the office of the clerk or which have been produced by a law
21 enforcement agency in which the name of the youthful offender is
22 mentioned. The court may order probation officers and counselors to
23 destroy all records, reports, and social and clinical studies

1 relating to said youthful offender that are in their possession
2 except when said documents are necessary to maintain state or
3 federal funding.

4 SECTION 10. This act shall become effective July 1, 2006.

5 SECTION 11. It being immediately necessary for the preservation
6 of the public peace, health and safety, an emergency is hereby
7 declared to exist, by reason whereof this act shall take effect and
8 be in full force from and after its passage and approval.

9 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN RESOURCES, dated
10 2-23-06 - DO PASS, As Amended and Coauthored.