

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1765

By: Riley

AS INTRODUCED

An Act relating to juveniles; amending 10 O.S. 2001, Section 7306-2.2, which relates to definitions; adding certain definition; amending 10 O.S. 2001, Section 7306-2.4, which relates to youthful offender proceedings; requiring certain notification of juvenile arrest to detention; prohibiting certain person to be tried as juvenile after certification as an adult and imposition of a deferred judgment; clarifying language; amending 10 O.S. 2001, Section 7306-2.5, which relates to certification of youthful offender; authorizing certain inquiry to avoid delay in certain proceedings; clarifying time for preliminary hearing; stating procedure for commencing preliminary hearing; prioritizing certain guidelines for consideration by court; amending 10 O.S. 2001, Section 7306-2.6, which relates to mandating youthful offender status; modifying certain offenses for mandatory youthful offender status; requiring certain notification by district attorney upon filing youthful offender charges; stating certain procedure for preliminary hearing; providing certain prohibition to adult sentence; waiving certain right to hearing within certain time for failure to cooperate and locate parents; modifying and prioritizing criteria for determining certification motion; clarifying language; amending 10 O.S. 2001, Section 7306-2.8, which relates to motion to sentence child as adult; granting district attorney election to file motion for adult sentencing at certain times; stating time for certain election; prohibiting certain motion after previous filing; prioritizing consideration for court at certain hearing; increasing fee of presentence investigation; amending 10 O.S. 2001, Section 7306-2.9, which relates to presentence investigation; prioritizing certain consideration at certain hearing; modifying language; directing court to defer certain sentencing as a youthful offender; providing exception for capital offenses; stating certain legislative intent; amending 10 O.S. 2001, Section 7306-2.10, which relates to rehabilitation plan; requiring identification of specific services and programs; requiring certain measurable objectives; making certain plan meet certain needs of youthful offender and protect public; requiring semi-annual review by court; requiring notice of review hearing to certain persons; adding offense for imposition of adult sentence; allowing certain persons to file certain motion to extend jurisdiction and custody; stating time for discharge of youthful offender; requiring certain information concerning previous adjudications

for certain purpose; clarifying language; amending 10 O.S. 2001, Section 7306-2.11, which relates to placement and rights of youthful offender; providing for certain medical care; amending 10 O.S. 2001, Section 7306-2.12, which relates to release from penalties; clarifying 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), 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.

3. "Next friend" means an individual or executive of an organization who has assumed a parental role without formal legal

proceedings, but to all objective observers is readily identified as custodian or guardian in fact.

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 7306-2.4, 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 county jail if separated by sight and sound 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. The sheriff, chief of police, or juvenile or adult detention facility operator shall forthwith notify the Department of Juvenile Justice of any such arrest and detention.

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 as a juvenile delinquent 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 and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentence has been deferred; 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~~ adjudicated 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 3. AMENDATORY 10 O.S. 2001, 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~~ the act as if ~~he~~ the person 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. The court may inquire of the accused as to the whereabouts of his or her parents, guardian, or next friend in order to avoid unnecessary delay in the proceedings.

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 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~~ heard 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~~ commence a preliminary hearing within ninety (90) days of the ~~charging of the accused person~~ filing of the information, 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~~ a crime. If the preliminary hearing is not commenced within ninety (90) days of the date the accused person is charged, the district court shall hold a hearing to determine the reasons for delay utilizing the procedure set out in Section 812.2 of Title 22 of the Oklahoma Statutes, to ensure the preliminary hearing is expedited. If the whereabouts of the accused are unknown at the time of the filing of the information or if the accused is a fugitive, the State of Oklahoma shall make reasonable efforts to locate the accused in order to commence the proceedings. An accused who flees the jurisdiction of the court or purposely avoids apprehension for the charges, waives the right to have the preliminary hearing commenced within ninety (90) days of the filing of the information. An accused who fails to cooperate with providing information in locating the parents of the accused, guardian, or next friend for purpose of notice waives the right to have the preliminary hearing commence within ninety (90) days of the filing of the information.

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~~ an alleged juvenile delinquent.

D. The court shall rule on any motions for certification as a youthful offender or an alleged juvenile delinquent 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 with greatest weight to be given to paragraphs 1, 2 and 3:

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~~ the person's 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 reasonable 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. The order certifying a person as a youthful offender or ~~a~~ an alleged juvenile delinquent or denying the request for certification as either a youthful offender or ~~a~~ an alleged juvenile delinquent 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 an alleged juvenile delinquent 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 4. AMENDATORY 10 O.S. 2001, 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; or
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~~ Any offense in violation 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;

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 C 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~~ 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. The district attorney shall notify the Department of Juvenile Justice upon the filing of youthful offender charges.

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~~ The court shall commence a preliminary hearing within ninety (90) days of the filing of the information 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. If the preliminary hearing is not commenced within ninety (90) days, the State shall be prohibited from seeking an adult sentence unless the ninety (90) day requirement is waived by the defendant. If the whereabouts of the accused are unknown at the time of the filing of the information or if the accused is a fugitive, the State of Oklahoma shall make reasonable efforts to locate the accused in order to commence the proceedings. An accused who flees the jurisdiction of the court or purposely avoids apprehension for the charges, waives the right to have the preliminary hearing commenced within ninety (90) days of the filing of the information. An accused who fails to cooperate with providing information in locating the accused parent, guardian, or next friend for purpose of notice waives the right to have the preliminary hearing commence within ninety (90) days of the filing of the information.

F. 1. The accused person may file a motion for certification to the juvenile justice 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 justice 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 with the greatest weight given to subparagraphs a, b and c:

- 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~~ 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~~ 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,
- 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~~ sophistication and maturity of the accused person and the capability of distinguishing right from wrong as determined by consideration of the accused person's

- psychological evaluation, home, environmental situation, emotional attitude and pattern of living,
- e. the prospects for adequate protection of the public if the accused person is processed through the youthful offender system or the juvenile system,
 - f. the reasonable likelihood of ~~reasonable~~ rehabilitation of the ~~juvenile~~ accused person if ~~he~~ the accused 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~~ youthful offenders or juvenile delinquents.

4. In its decision on the motion for certification as a an alleged juvenile delinquent, the court 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.

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

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 convicted person may be incarcerated with the adult population.

SECTION 5. AMENDATORY 10 O.S. 2001, 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 more than thirty (30) days following formal arraignment and such motion will be ruled upon by the trial court; or the district attorney may file the motion to impose adult sentence fourteen (14) days prior to the start of the preliminary hearing and the preliminary hearing magistrate will rule on that motion. The district attorney must elect when to file the motion for adult sentence and if the motion is filed and argued to the magistrate, it cannot again be filed and argued to the trial court after arraignment; or

2. If, prior to that time, the accused person indicates to the court that the accused person wishes to plead guilty or nolo contendere, 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, with the greatest weight given to subparagraphs a, b and c:

- 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~~ 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,
- 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~~ sophistication and maturity of the accused
person and the accused person's capability of
distinguishing right from wrong as determined by
consideration of the accused person's psychological
evaluation, home, environmental situation, emotional
attitude and pattern of living,
- e. the prospects for adequate protection of the public if
the accused person is processed through the youthful
offender system or the juvenile system,
- f. the reasonable likelihood of ~~reasonable~~ rehabilitation
of the ~~youthful offender~~ accused person if ~~he~~ the
accused person is found to have committed the alleged
offense, by the use of procedures and facilities
currently available to the juvenile court ~~if the~~

~~accused person is processed through the youthful offender system, and~~

- g. whether the offense occurred while the accused person was escaping or on escape status from a ~~secure facility~~ an institution 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.

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)~~ Twenty-five Dollars (\$25.00), nor more than ~~Two Hundred Fifty Dollars (\$250.00)~~ Five Hundred Dollars (\$500.00), 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 6. AMENDATORY 10 O.S. 2001, 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, with the greatest weight given to subparagraphs a, b and c:

- a. 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 when and, if personal injury resulted and, 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~~ 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,

- 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~~ the sophistication and maturity of the accused person and the accused person's capability of distinguishing right from wrong as determined by consideration of the accused person's psychological evaluation, home, environmental situation, emotional attitude and pattern of living,
- e. the prospects for adequate protection of the public if the accused person is processed through the youthful offender system or the juvenile system,
- f. the reasonable likelihood of ~~reasonable~~ rehabilitation of the ~~youthful offender~~ accused person if 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~~ juvenile, and
- g. whether the offense occurred while the person was escaping or on escape status from ~~a secure facility~~ an institution for youthful offenders or delinquent children.

B. 1. After the hearing and consideration of the report of the presentence investigation, the court shall ~~impose sentence~~ defer sentencing as a youthful offender within the range prescribed by law for adult felony convictions except capital offenses. ~~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.~~

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

~~1. Place~~ a. place the youthful offender under the supervision of the Office of Juvenile Affairs through its Department of Juvenile Justice~~†~~, or

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

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

4. 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~~ an adjudicated juvenile delinquent.

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

Section 7306-2.10 A. Whenever a youthful offender is placed in the custody of or under the supervision of the Office of Juvenile Affairs, the Office shall within thirty (30) days prepare and file with the court a proposed written rehabilitation plan for the youthful offender. The proposed 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 proposed placement of the youthful offender;

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

3. ~~The~~ Identify the specific services and programs that will be provided to the youthful offender by the Department of Juvenile Justice to assist the youthful offender to achieve the measurable objectives to be reached, including but not limited to, diagnostic testing consistent with the current standards of medical practice. The rehabilitation plan shall be tailored to the needs and goals of the youthful offender while ensuring protection of the public while the offender is in the custody or supervision of the Office of Juvenile Affairs.

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~~ such person's 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 shall schedule ~~an annual~~ a semi-annual review 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 in the custody of the Department of Juvenile Justice 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~~ following notice to the ~~youth offender, his~~ or to such person's 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 shall also receive notice prior to the review hearing.

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 over which the court has jurisdiction 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;

5. 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~~ such person's violent behavior, or
- b. escaped from a training school, or
- 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, a plea of guilty or nolo contendere, or as shown by clear and convincing evidence, or
- d. failed substantially to comply with the previously adopted written plan of rehabilitation or failed to substantially complete the reasonable treatment objectives, or
- 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~~
while in the custody or under the supervision of the Office of Juvenile Affairs, committed battery or assault and battery on a state employee or contractor.

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, the district attorney, or the youthful offender 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, and
- b. has substantially complied 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~~ adjudicated 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, within the thirty (30) days immediately preceding the date on which the youthful offender becomes eighteen (18) years of age, 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~~ Each judgment and sentence committing a person who has previously been adjudicated a youthful offender and subsequently sentenced as an adult pursuant to Sections 7306-2.8 of Title 10 of the Oklahoma Statutes and paragraph F of this section shall clearly identify the offender as having been previously adjudicated a youthful offender and shall detail the history of the

application of the Youthful Offender Act resulting in the Department of Corrections commitment. The history shall include, but not be limited to, the date of the offense, the date of the adjudication as a youthful offender, the date of the filing of the motion to bridge, and the date of the imposition of the adult sentence. A judgment and sentence ordering custody of a youthful an offender to the Department of Corrections shall ~~result in~~ memorialize 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~~ the person 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 8. AMENDATORY 10 O.S. 2001, Section 7306-2.11, is amended to read as follows:

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

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

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

3. Place the youthful offender under community supervision prior to or after a period of placement in one or more of the facilities referred to in paragraphs 1 and 2 of this subsection. The Department of Juvenile Justice may place a youthful offender in his or her own home, or an independent living or other similar living arrangement within the community of the residence of the

youthful offender only upon the approval of the court; provided the court shall not prohibit the reintegration of the youthful offender into the community except upon finding that the youthful offender has not reasonably completed the rehabilitation plan objectives established as preconditions for reintegration into the community or that the public would not be adequately protected if the youthful offender is reintegrated into the community; or

4. Place the youthful offender in a sanction program 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.

B. The Department of Juvenile Justice shall be responsible for the care and control of a youthful offender placed in the custody of the Office of Juvenile Affairs, and shall have the duty and the authority to provide food, clothing, shelter, ordinary medical care, education, discipline and in an emergency to authorize surgery or other extraordinary care. Said medical care, surgery and extraordinary care shall be charged to the appropriate agency where the youthful offender qualifies for said care under law, rule, regulation or administrative order or decision. Nothing in this section shall abrogate the right of a youthful offender to any benefits provided through public funds nor the parent's statutory duty or responsibility to provide said necessities; further, no person, agency or institution shall be liable in a civil suit for damages for authorizing or not authorizing surgery or extraordinary care in an emergency, as determined by competent medical authority. A youthful offender placed in the custody of the Office of Juvenile Affairs who has attained the age of eighteen (18) years of age or older may authorize and consent to the medical care sought on behalf of the youthful offender by the Office of Juvenile Affairs and to be provided to the youthful offender by a qualified health care professional. No state employee shall be liable for the costs of

any medical care or mental health services provided to any child in the custody of the Office of Juvenile Affairs.

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

1. Be entitled to all the rights afforded juvenile delinquents pertaining to the conditions and restrictions in facilities where delinquents may be placed, including any due process afforded delinquents in regard to movement from a nonsecure to a secure placement;

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

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

SECTION 9. AMENDATORY 10 O.S. 2001, 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~~ such person 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 over whom the court has jurisdiction 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 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. This act shall become effective July 1, 2006.

SECTION 11. 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.