

ENROLLED SENATE
BILL NO. 390

By: Barrington of the Senate

and

Peters of the House

An Act relating to children; amending 10 O.S. 2001, Sections 7306-2.10, as amended by Section 8, Chapter 286, O.S.L. 2006, and 7307-1.5 (10 O.S. Supp. 2006, Section 7306-2.10), which relate to annual review hearing and inspection and disclosure of juvenile records; stating result of certain order; modifying name of certain Department; allowing disclosure of certain records to specified entities; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7306-2.10, as amended by Section 8, Chapter 286, O.S.L. 2006 (10 O.S. Supp. 2006, 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 written rehabilitation plan for the youthful offender. 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. The rehabilitation plan shall include, but not be limited to:

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

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

3. 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.

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 of the offender 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 such reports shall be provided by the agency to the youthful offender, the youthful offender'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. In addition to the semiannual reviews of the youthful offender required in subsection B of this section, the court shall schedule an annual review hearing in open court for every youthful offender in the custody or supervision of the Office of Juvenile Affairs. Such hearing may be scheduled either upon the court's own motion or upon a motion filed by the Office of Juvenile Affairs. Each annual review hearing shall be scheduled and completed within the thirty-day period immediately preceding the date of the youthful offender's birthday. Notice shall be given to the youthful offender, the youthful offender's counsel, parent or guardian if the youthful offender is less than eighteen (18) years of age, the district attorney, and the Department of Juvenile Justice at the time the motion for review is made or filed. The court, at its discretion, may schedule other review hearings as the court deems

necessary, after notice to the parties. The court shall hold a review hearing for good cause shown, upon any motion filed by the district attorney, the Department of Juvenile Justice, or the youthful offender for the purpose of making a determination to:

1. Discharge the youthful offender from the supervision or custody of the Department of Juvenile Justice;

2. Change the custody status of the youthful offender. For the purpose of this paragraph, "change 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; or

3. Extend the jurisdiction and custody or supervision over a youthful offender in the Department of Juvenile Justice, or renew an existing court order for such extension. An order granting or denying the extension of jurisdiction and custody or supervision shall be a final appealable order to the Court of Criminal Appeals.

D. If the youthful offender has not been previously discharged from the jurisdiction and custody or supervision of the Department of Juvenile Justice by operation of law or upon any motion for discharge, a youthful offender shall be discharged from the jurisdiction and custody or supervision of the Department of Juvenile Justice upon reaching his or her eighteenth birthday, except when a motion for extension of jurisdiction and custody or supervision, or a motion to transfer custody of the youthful offender to the Department of Corrections as authorized by subsection C of this section is timely filed as specified in this subsection.

1. An initial motion for extension of jurisdiction and custody or supervision of a youthful offender in the Department of Juvenile Justice must be filed and notice given to all parties not later than thirty (30) days immediately preceding the date of the youthful offender's eighteenth birthday. A motion to extend jurisdiction when ordered by the court, after notice and hearing, shall extend jurisdiction and custody or supervision over the youthful offender for a one-year period of time, and such order may be renewed in the same manner as the initial motion; provided, all motions for renewal of an existing order of extension shall be filed not later than

thirty (30) days immediately preceding the date of the expiration of such order. Failure to timely file a motion to extend jurisdiction, or timely renew such order, or to prevail on such motion at the hearing, shall operate to discharge the youthful offender from the jurisdiction and custody or supervision of the Department of Juvenile Justice on the immediate next date of the youthful offender's birthday. The maximum term for all extensions of jurisdiction and custody or supervision for a youthful offender, including all subsequent renewals of such court orders, shall not exceed the date of the youthful offender's twentieth birthday; provided, however, at such time as a separate youthful offender facility is established, constructed and operational, the court may consider a motion to renew a previous court order for extension for a one-year period not to exceed the date of the youthful offender's twenty-first birthday. The initial court order for extension, and every subsequent renewal of such court order, shall be calculated from the immediate next birth date to the birth date in the following calendar year. The court shall schedule a hearing upon a properly filed motion as provided in subsection C of this section.

2. If the youthful offender has not been previously discharged from the jurisdiction and custody or supervision of the Department of Juvenile Justice by operation of law or upon any motion for discharge, and a motion to transfer custody and supervision of the youthful offender to the Department of Corrections is filed, the court shall schedule and hold a review hearing following notice to the parties. A motion to transfer custody of a youthful offender to the Department of Corrections may be made at any time, but not later than thirty (30) days immediately preceding the date of the youthful offender's eighteenth birthday, or thirty (30) days immediately preceding the expiration of any valid court order to extend jurisdiction, or thirty (30) days immediately preceding the maximum term of jurisdiction authorized by law for custody of a youthful offender in the Department of Juvenile Justice, or any time during the term of any court order for extension of jurisdiction in the Department of Juvenile Justice.

E. At a review hearing based upon any motion to extend jurisdiction and custody or supervision of a youthful offender, or to transfer custody of a youthful offender to the Department of Corrections, the court shall not be authorized to grant any postponement, delay or continuance of the matter which has the

effect of continuing jurisdiction and custody or supervision of the youthful offender in the Department of Juvenile Justice beyond the youthful offender's eighteenth birthday, except when jurisdiction has been lawfully extended as provided by law, and in such case, the court shall not grant any postponement, delay or continuance of the matter beyond the immediate next birthday of the youthful offender upon which the motion was based and timely filed.

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 the passage of three (3) years after the date of 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 to impose 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 if the court finds by clear and convincing evidence that the youthful offender has:

- a. after certification as a youthful offender, seriously injured or endangered the life or health of another person by such person's violent behavior,
- b. escaped from a training school,
- c. committed a felony crime while in the custody or under the supervision of the Department of Juvenile Justice as shown by a judgment entered following a verdict of guilty, a plea of guilty or nolo contendere, or as shown by clear and convincing evidence,
- d. failed substantially to comply with the previously adopted written plan of rehabilitation or failed to substantially complete the reasonable treatment objectives, or
- e. committed battery or assault and battery on a state employee or contractor of a juvenile facility while in the custody of such facility.

The court, in its decision to transfer custody of the youthful offender to the custody of the Department of Corrections, shall

detail findings of fact and conclusions of law addressing the grounds alleged in the motion of the state; or

6. Grant the motion for extension of jurisdiction or its subsequent renewal and authorize the Department of Juvenile Justice to retain custody or supervision of the youthful offender for an additional one-year period of time; provided the evidence supports the fact that the youthful offender 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 to hold review hearings as provided in this section, and may proceed at any such hearing 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. Under no circumstance shall any youthful offender or other person remain in, or be deemed to be in, the custody or under the supervision of the Department of Juvenile Justice beyond the date of his or her eighteenth birthday without a court-ordered extension of jurisdiction properly made and granted as provided by law, and in such cases no youthful offender shall remain in, or be deemed to be in, the custody or under the supervision of such Department for more than one-year intervals with the maximum term of jurisdictional extension terminating on or before the person's twentieth birthday; provided, however, at such time as a separate facility for youthful offenders has been established, constructed and is operational and a motion has been properly made and granted for a one-year renewal of a previous order for extension of jurisdiction, in such case only shall the maximum term of jurisdiction terminate on or before the date of the youthful offender's twenty-first birthday.

H. An order transferring custody of a youthful offender to the Department of Corrections shall be deemed an adult conviction and shall be recorded as such in the court records and criminal history records of the offender. Such order shall be a final order, appealable when entered. In addition to a judgment and sentence for an adult conviction, the court shall provide to the Department of Corrections a detailed memorandum or historical statement of the Youthful Offender Act as applied to the offender being transferred to the Department of Corrections, including the date of the offense,

the date of the adjudication as a youthful offender, the date of all jurisdictional extensions and renewals of such orders, the date of the filing of the motion to transfer custody of the offender to the adult criminal system, and the date of the imposition of the adult sentence.

I. The court shall grant time-served credits against the adult sentence imposed for any youthful offender transferred to the Department of Corrections. 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, the offender shall receive day-for-day 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 2. AMENDATORY 10 O.S. 2001, Section 7307-1.5, is amended to read as follows:

Section 7307-1.5 A. ~~Department~~ The Office of Juvenile Justice Affairs agency records pertaining to a child which are confidential may be inspected and their contents disclosed without a court order to the following persons upon showing of proper credentials:

1. The judge having the child currently before the court in any proceeding pursuant to this title, any judge of the district court or tribal court to which any proceedings may be transferred;

2. Employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court, and members of review boards established pursuant to the Oklahoma Children's Code;

3. A district attorney and the employees of an office of a district attorney in the course of their official duties pursuant to this title or the prosecution of crimes against children, including providing summary dispositional and placement information to the victim of the delinquent acts of the child;

4. The attorney representing a child who is the subject of a juvenile proceeding pursuant to the provisions of this title. The attorney representing a child or an attorney considering representing a child in a juvenile proceeding may access other confidential records listed in subsection A of Section 7307-1.2 of this title for use in the legal representation of the child;

5. Employees of juvenile bureaus in the course of their official duties;

6. Employees of a law enforcement agency of this or another state and employees of a child protective service of another state or any federally recognized Indian tribe member in the course of their official duties pertaining to investigations of a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody;

7. Employees of a law enforcement agency in the course of their official duties pertaining to the investigation of a crime committed or alleged to have been committed by a person under eighteen (18) years of age. Records or information disclosed pursuant to this ~~subparagraph~~ paragraph may consist of summaries or may be limited to the information or records necessary for the purpose of the investigation;

8. The Oklahoma Commission on Children and Youth;

9. The Department of Human Services;

10. Any public or private agency or person authorized by the ~~Department~~ Office of Juvenile ~~Justice~~ Affairs to diagnose, or provide care, treatment, supervision or other services to a child who is the subject of a report or record of delinquency, child abuse or neglect, or other adjudicatory category, provided the Department may limit the disclosure to summaries or to information directly necessary for the purpose of the disclosure;

11. Any federally recognized Indian tribe or state or county child protective services or child welfare agency providing for or supervising the diagnosis, care, treatment, supervision or other services provided such child;

12. The parents of the child who is the subject of any records;

13. Any person or agency for research purposes, if all of the following conditions are met:

- a. the person or agency conducting the research is employed by the State of Oklahoma or is under contract with this state and is authorized by the Office of Juvenile Affairs to conduct the research, and
- b. the person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to any documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed;

14. The Governor or to any person the Governor designates, in writing;

15. Any federal official of the United States Department of Health and Human Services, the United States Social Security Administration, ~~or~~ the United States Department of Justice, the United States Department of Homeland Security, or any employee of the United States Probation Office;

16. Any member of the Legislature, upon the written approval of the Speaker of the House of Representatives or the President Pro Tempore of the Senate; and

17. Employees of the Department of Corrections in the course of their official duties.

B. Records and their contents disclosed without an order of the court as provided by the provisions of this section shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful for any person to furnish any confidential record or disclose any confidential information contained in any juvenile record for

commercial, political or any other unauthorized purpose. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 17th day of May, 2007.

Presiding Officer of the Senate

Passed the House of Representatives the 21st day of May, 2007.

Presiding Officer of the House
of Representatives

