

1 **SENATE FLOOR VERSION**

2 February 27, 2018

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 224

6 By: Griffin

7 An Act relating to youthful offenders; amending 10A
8 O.S. 2011, Sections 2-5-204, 2-5-205, 2-5-206, 2-5-
9 207, 2-5-208 and 2-5-209, which relate to treatment,
10 certification, applicability and sentencing;
11 requiring confidentiality of certain records;
12 providing exceptions; authorizing release of certain
13 records under specified circumstances; increasing
14 maximum age for certain offender status; granting
15 jurisdiction over certain offenders; repealing 10A
16 O.S. 2011, Section 2-5-101, which relates to
17 juveniles of certain ages to be considered adults for
18 certain offenses committed; updating language; and
19 providing an effective date.

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

21 SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-5-204, is
22 amended to read as follows:

23 Section 2-5-204. A. A child who is arrested for an offense
24 pursuant to subsection A or B of Section 2-5-206 of this title, or
who is certified as a youthful offender pursuant to Section 2-5-205
of this title, shall be charged by information in the same manner as
provided for adults.

1 B. If the child is not otherwise represented by counsel and
2 requests an attorney prior to or during interrogation, or whenever
3 charged by information, as provided in subsection A of this section,
4 the court shall appoint an attorney, who shall not be a district
5 attorney, for the child regardless of any attempted waiver by the
6 parent, legal guardian, or other legal custodian of the child of the
7 right of the child to be represented by counsel. Counsel shall be
8 appointed by the court only upon determination by the court that the
9 parent, legal guardian or legal custodian is found to be indigent.

10 C. When a person is certified to stand trial as an adult or a
11 youthful offender as provided by the Youthful Offender Act, the
12 accused person shall have all the statutory and constitutional
13 rights and protections of an adult accused of a crime. All
14 proceedings shall be as for a criminal action and the provisions of
15 Title 22 of the Oklahoma Statutes shall apply, except as provided
16 for in the Youthful Offender Act.

17 D. All youthful offender court records ~~for such a person~~ shall
18 be confidential unless:

19 1. The motion to impose an adult sentence is granted by the
20 court pursuant to subsection D of Section 2-5-208 of this title;

21 2. The court sentences the person as an adult pursuant to
22 paragraph 1 or 3 of subsection B of Section 2-5-208 of this title;

23 or

24

1 3. The motion to transfer the person to the custody or
2 supervision of the Department of Corrections is granted pursuant to
3 paragraph 5 of subsection B of Section 2-5-210 of this title.

4 The records shall be considered adult records and shall not be
5 subject to the provisions of Chapter 6 of the Oklahoma Juvenile
6 Code.

7 ~~D.~~ E. Proceedings against a youthful offender shall be heard by
8 any judge of the district court.

9 ~~E.~~ F. Upon arrest and detention of a person subject to the
10 provisions of Section 2-5-205 or 2-5-206 of this title, the person
11 has the same right to be released on bail as would an adult in the
12 same circumstances and, if detained, may be detained in a county
13 jail if separated by sight and sound from the adult population as
14 otherwise authorized by law. If no such county jail is available,
15 then such person may be detained at a juvenile detention facility.
16 The sheriff, chief of police, or juvenile or adult detention
17 facility operator shall forthwith notify the Office of Juvenile
18 Affairs of any such arrest and detention.

19 ~~F.~~ G. Upon certification for the imposition of an adult
20 sentence, a verdict of guilty or entry of a plea of guilty or nolo
21 contendere by a youthful offender who has been certified for the
22 imposition of an adult sentence as provided by Section 2-5-208 of
23 this title, the person may be detained as an adult and, if
24 incarcerated, may be incarcerated with the adult population.

1 ~~G.~~ H. A child or youthful offender shall be tried as an adult
2 in all subsequent criminal prosecutions, and shall not be subject to
3 the jurisdiction of the juvenile court as a juvenile delinquent or
4 youthful offender processes in any further proceedings if:

5 1. The child or youthful offender has been certified to stand
6 trial as an adult pursuant to any certification procedure provided
7 by law and is subsequently convicted of the alleged offense or
8 against whom the imposition of judgment and sentence has been
9 deferred; or

10 2. The youthful offender has been certified for the imposition
11 of an adult sentence as provided by Section 2-5-208 of this title
12 and is subsequently convicted of the alleged offense or against whom
13 the imposition of judgment and sentencing has been deferred.

14 ~~H.~~ I. Except as otherwise provided in the Youthful Offender
15 Act, a person who has been certified as a youthful offender shall be
16 prosecuted as a youthful offender in all subsequent criminal
17 proceedings until the youthful offender has attained eighteen (18)
18 years of age.

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

22 SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-5-205, is
23 amended to read as follows:

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1 Section 2-5-205. A. Any person thirteen (13) or fourteen (14)
2 years of age who is charged with murder in the first degree shall be
3 held accountable for the act as if the person were an adult;
4 provided, the person may be certified as a youthful offender or a
5 juvenile as provided by this section, unless the person is subject
6 to the provisions of subsection G H of Section 2-5-204 of this
7 title.

8 B. Any person fifteen (15), sixteen (16) or seventeen (17)
9 years of age who is charged with murder in the first degree at that
10 time shall be held accountable for his or her act as if the person
11 was an adult and shall not be subject to the provisions of the
12 Youthful Offender Act or the provisions of the Juvenile Code for
13 certification as a juvenile. The person shall have all the
14 statutory rights and protections of an adult accused of a crime.
15 All proceedings shall be as for a criminal action and the provisions
16 of Title 22 of the Oklahoma Statutes shall apply. A person having
17 been convicted as an adult pursuant to this paragraph shall be tried
18 as an adult for every subsequent offense.

19 C. 1. Upon the filing of an adult criminal information against
20 such accused person, a warrant shall be issued which shall set forth
21 the rights of the accused person, and the rights of the parents,
22 guardian or next friend of the accused person to be present at the
23 preliminary hearing, to have an attorney present and to make
24 application for certification of such accused person as a youthful

1 offender to the district court for the purpose of prosecution as a
2 youthful offender.

3 2. The warrant shall be personally served together with a
4 certified copy of the information on the accused person and on a
5 custodial parent, guardian or next friend of the accused person.
6 The court may inquire of the accused as to the whereabouts of his or
7 her parents, guardian, or next friend in order to avoid unnecessary
8 delay in the proceedings.

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

1 other means of service of notice that the court deems advisable or
2 in the interests of justice.

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

7 D. 1. The accused person shall file any motions for
8 certification as a youthful offender or a juvenile before the start
9 of the criminal preliminary hearing. If both a motion for
10 certification as a youthful offender and a motion for certification
11 as a juvenile are filed, they shall both be heard at the same time.
12 No motion for certification as a youthful offender or certification
13 as a juvenile may be filed after the time specified in this
14 subsection. Upon the filing of such motion, the complete juvenile
15 record of the accused shall be made available to the district
16 attorney and the accused person. All reports, evaluations, motions,
17 records, exhibits or documents generated that are submitted to the
18 court or admitted into evidence during the hearing on the motions
19 for certification as a youthful offender or a juvenile or imposition
20 of an adult sentence are confidential and shall be filed or admitted
21 under seal, except that such records shall be provided to the Office
22 of Juvenile Affairs. The reports, evaluations, motions, records,
23 exhibits or documents shall be released from under seal by order of
24 the court if the youthful offender is sentenced to the custody or

1 supervision of the Department of Corrections by the court pursuant
2 to either paragraph 1 of subsection B of Section 2-5-209 or
3 paragraph 5 of subsection B of Section 2-5-210 of this title.

4 2. The court shall commence a preliminary hearing within ninety
5 (90) days of the filing of the information, pursuant to Section 258
6 of Title 22 of the Oklahoma Statutes, to determine whether the crime
7 was committed and whether there is probable cause to believe the
8 accused person committed a crime. If the preliminary hearing is not
9 commenced within ninety (90) days of the date the accused person is
10 charged, the district court shall hold a hearing to determine the
11 reasons for delay utilizing the procedure set out in Section 812.2
12 of Title 22 of the Oklahoma Statutes, to ensure the preliminary
13 hearing is expedited. If the whereabouts of the accused are unknown
14 at the time of the filing of the information or if the accused is a
15 fugitive, the State of Oklahoma shall make reasonable efforts to
16 locate the accused in order to commence the proceedings. An accused
17 who flees the jurisdiction of the court or purposely avoids
18 apprehension for the charges, waives the right to have the
19 preliminary hearing commenced within ninety (90) days of the filing
20 of the information. An accused who fails to cooperate with
21 providing information in locating the parents of the accused,
22 guardian, or next friend for purpose of notice waives the right to
23 have the preliminary hearing commence within ninety (90) days of the
24 filing of the information. However, if an accused who was absent

1 for ninety (90) days after the filing of the information is detained
2 in a juvenile detention center or county jail within this state, or
3 his or her location becomes known to the state at any time after the
4 first ninety (90) days have expired, the preliminary hearing shall
5 commence within ninety (90) days of the notice of the location.

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

10 E. The court shall rule on any motions for certification as a
11 youthful offender or an alleged juvenile delinquent before ruling on
12 whether to bind the accused over for trial. When ruling on a motion
13 for certification as a youthful offender or juvenile, the court
14 shall give consideration to the following guidelines with greatest
15 weight to be given to paragraphs 1, 2 and 3:

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

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

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

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1 4. The sophistication and maturity of the accused person and
2 the capability of distinguishing right from wrong as determined by
3 consideration of the person's psychological evaluation, home,
4 environmental situation, emotional attitude and pattern of living;

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

8 6. The reasonable likelihood of rehabilitation of the accused
9 person if such person is found to have committed the alleged
10 offense, by the use of procedures and facilities currently available
11 to the juvenile court; and

12 7. Whether the offense occurred while the accused person was
13 escaping or on escape status from an institution for youthful
14 offenders or delinquent children.

15 The court, in its decision on a motion for certification as a
16 youthful offender or juvenile, shall detail findings of fact and
17 conclusions of law to each of the above considerations, and shall
18 state that the court has considered each of the guidelines in
19 reaching its decision.

20 F. The order certifying a person as a youthful offender or an
21 alleged juvenile delinquent or denying the request for certification
22 as either a youthful offender or an alleged juvenile delinquent
23 shall be a final order, appealable to the Court of Criminal Appeals
24 when entered.

1 G. An order certifying the accused person as a youthful
2 offender or an alleged juvenile delinquent shall not be reviewable
3 by the trial court.

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

9 SECTION 3. AMENDATORY 10A O.S. 2011, Section 2-5-206, is
10 amended to read as follows:

11 Section 2-5-206. A. Any person fifteen (15), sixteen (16) or
12 seventeen (17) years of age who is charged with:

- 13 1. Murder in the second degree;
- 14 2. Kidnapping;
- 15 3. Manslaughter in the first degree;
- 16 4. Robbery with a dangerous weapon or a firearm or attempt
17 thereof;
- 18 5. Robbery in the first degree or attempt thereof;
- 19 6. Rape in the first degree or attempt thereof;
- 20 7. Rape by instrumentation or attempt thereof;
- 21 8. Forcible sodomy;
- 22 9. Lewd molestation;
- 23 10. Arson in the first degree or attempt thereof; or

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1 11. Any offense in violation of Section 652 of Title 21 of the
2 Oklahoma Statutes,

3 shall be held accountable for such acts as a youthful offender.

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

6 1. Burglary in the first degree or attempted burglary in the
7 first degree;

8 2. Battery or assault and battery on a state employee or
9 contractor while in the custody or supervision of the Office of
10 Juvenile Affairs;

11 3. Aggravated assault and battery of a police officer;

12 4. Intimidating a witness;

13 5. Trafficking in or manufacturing illegal drugs;

14 6. Assault or assault and battery with a deadly weapon;

15 7. Maiming;

16 8. Residential burglary in the second degree after two or more
17 adjudications that are separated in time for delinquency for
18 committing burglary in the first degree or residential burglary in
19 the second degree;

20 9. Rape in the second degree; or

21 10. Use of a firearm while in commission of a felony,
22 shall be held accountable for such acts as a youthful offender.

23 C. The district attorney may file a petition alleging the
24 person to be a delinquent or may file an information against the

1 accused person charging the person as a youthful offender. The
2 district attorney shall notify the Office of Juvenile Affairs upon
3 the filing of youthful offender charges.

4 D. 1. Upon the filing of the information against such alleged
5 youthful offender, a warrant shall be issued which shall set forth
6 the rights of the accused person, and the rights of the parents,
7 guardian or next friend of the accused person to be present at the
8 preliminary hearing, and to have an attorney present.

9 2. The warrant shall be personally served together with a
10 certified copy of the information on the alleged youthful offender
11 and on a custodial parent, guardian or next friend of the accused
12 person.

13 3. When personal service of a custodial parent, guardian or
14 next friend of the alleged youthful offender cannot be effected,
15 service may be made by certified mail to the last-known address of
16 the person, requesting a return receipt from the addressee only. If
17 delivery is refused, notice may be given by mailing the warrant and
18 a copy of the information on the accused person by regular first-
19 class mail to the address where the person to be notified refused
20 delivery of the notice sent by certified mail. Where the address of
21 a custodial parent, guardian or next friend is not known, or if the
22 mailed warrant and copy of the information on the accused person is
23 returned for any reason other than refusal of the addressee to
24 accept delivery, after a distinct and meaningful search of all

1 reasonably available sources to ascertain the whereabouts of a
2 custodial parent, guardian or next friend has been conducted, the
3 court may order that notice of the hearing be given by publication
4 one time in a newspaper of general circulation in the county. In
5 addition, the court may order other means of service of notice that
6 the court deems advisable or in the interests of justice.

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

11 E. The court shall commence a preliminary hearing within ninety
12 (90) days of the filing of the information pursuant to Section 258
13 of Title 22 of the Oklahoma Statutes, to determine whether the crime
14 was committed and whether there is probable cause to believe the
15 accused person committed the crime. If the preliminary hearing is
16 not commenced within ninety (90) days, the state shall be prohibited
17 from seeking an adult sentence unless the ninety-day requirement is
18 waived by the defendant. If the whereabouts of the accused are
19 unknown at the time of the filing of the information or if the
20 accused is a fugitive, the State of Oklahoma shall make reasonable
21 efforts to locate the accused in order to commence the proceedings.
22 An accused who flees the jurisdiction of the court or purposely
23 avoids apprehension for the charges, waives the right to have the
24 preliminary hearing commenced within ninety (90) days of the filing

1 of the information. However, if an accused who was absent for
2 ninety (90) days after the filing of the information is detained in
3 a juvenile detention center or county jail within this state, or his
4 or her location becomes known to the state at any time after the
5 first ninety (90) days have expired, the preliminary hearing shall
6 commence within ninety (90) days of the notice of the location. An
7 accused who fails to cooperate with providing information in
8 locating the accused parent, guardian, or next friend for purpose of
9 notice waives the right to have the preliminary hearing commence
10 within ninety (90) days of the filing of the information.

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

14 a. upon the filing of such motion, the complete juvenile
15 record of the accused shall be made available to the
16 district attorney and the accused person,

17 b. at the conclusion of the state's case at the criminal
18 preliminary hearing, the accused person may offer
19 evidence to support the motion for certification as a
20 child.

21 2. If no motion to certify the accused person to the juvenile
22 justice system has been filed, at the conclusion of the criminal
23 preliminary hearing the court may on its own motion hold a hearing
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1 on the matter of the certification of the accused youthful offender
2 to the juvenile system.

3 3. All reports, evaluations, motions, records, exhibits or
4 documents generated that are submitted to the court or admitted into
5 evidence during the hearing on the motion for certification of the
6 accused youthful offender to the juvenile system or motion for
7 imposition of an adult sentence are confidential and shall be filed
8 or admitted under seal, except that such records shall be provided
9 to the Office of Juvenile Affairs. The reports, evaluations,
10 motions, records, exhibits or documents shall be released from under
11 seal by order of the court if the youthful offender is sentenced to
12 the custody or supervision of the Department of Corrections by the
13 court pursuant to either paragraph 1 of subsection B of Section 2-5-
14 209 or paragraph 5 of subsection B of Section 2-5-210 of this title.

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

- 20 a. whether the alleged offense was committed in an
21 aggressive, violent, premeditated or willful manner,
22 b. whether the offense was against persons, and if
23 personal injury resulted, the degree of personal
24 injury,

- 1 c. the record and past history of the accused person,
2 including previous contacts with law enforcement
3 agencies and juvenile or criminal courts, prior
4 periods of probation and commitments to juvenile
5 institutions,
- 6 d. the sophistication and maturity of the accused person
7 and the accused person's capability of distinguishing
8 right from wrong as determined by consideration of the
9 accused person's psychological evaluation, home,
10 environmental situation, emotional attitude and
11 pattern of living,
- 12 e. the prospects for adequate protection of the public if
13 the accused person is processed through the youthful
14 offender system or the juvenile system,
- 15 f. the reasonable likelihood of rehabilitation of the
16 accused person if the accused is found to have
17 committed the alleged offense, by the use of
18 procedures and facilities currently available to the
19 juvenile court, and
- 20 g. whether the offense occurred while the accused person
21 was escaping or in an escape status from an
22 institution for youthful offenders or juvenile
23 delinquents.
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1 ~~4.~~ 5. In its decision on the motion for certification as an
2 alleged juvenile delinquent, the court shall detail findings of fact
3 and conclusions of law to each of the above considerations and shall
4 state that the court has considered each of the guidelines in
5 reaching its decision.

6 ~~5.~~ 6. An order certifying a person or denying such
7 certification to the juvenile justice system shall be a final order,
8 appealable when entered.

9 G. Upon conviction, sentence may be imposed as a sentence for a
10 youthful offender as provided by Section 2-5-209 of this title. If
11 the youthful offender sentence is imposed as an adult sentence as
12 provided by Section 2-5-208 of this title, the convicted person may
13 be incarcerated with the adult population.

14 SECTION 4. AMENDATORY 10A O.S. 2011, Section 2-5-207, is
15 amended to read as follows:

16 Section 2-5-207. It is the intent of the Legislature to fully
17 utilize the Youthful Offender Act as a means to protect the public
18 while rehabilitating and holding youth accountable for serious
19 crimes. The Legislature finds that eligible seventeen-year-olds
20 should have the opportunity to be processed as youthful offenders as
21 provided by law and held accountable through the various provisions
22 of the Youthful Offender Act for custody, institutional placement,
23 supervision, extended jurisdiction within the Office of Juvenile
24 Affairs, and the ability to transfer youthful offenders to the

1 Department of Corrections when incarceration or additional
2 supervision is required beyond the maximum age allowed in the Office
3 of Juvenile Affairs. No older youth should be deemed ineligible or
4 denied consideration as a youthful offender who is otherwise
5 lawfully eligible based upon the age of the youth being seventeen
6 (17) years, but it is the intent of the Legislature that such
7 youthful offender shall not remain in the custody or under the
8 supervision of the Office of Juvenile Affairs beyond the youthful
9 offender's maximum age of eighteen (18) years and ~~five (5)~~ six (6)
10 months or until nineteen (19) years if jurisdiction has been
11 extended as provided in subsection B of Section 2-5-209 of this
12 title. To deny access to an otherwise eligible older youth without
13 cause is to circumvent the original intent of the Legislature in
14 creating the Youthful Offender Act.

15 SECTION 5. AMENDATORY 10A O.S. 2011, Section 2-5-208, is
16 amended to read as follows:

17 Section 2-5-208. A. Whenever the district attorney believes
18 that there is good cause to believe that a person charged as a
19 youthful offender would not reasonably complete a plan of
20 rehabilitation or the public would not be adequately protected if
21 the person were to be sentenced as a youthful offender, and should
22 receive an adult sentence, the district attorney shall file a motion
23 for consideration of the imposition of the sentence as for an adult
24 if the person is convicted:

1 1. Not more than thirty (30) days following formal arraignment
2 and such motion will be ruled upon by the trial court; or the
3 district attorney may file the motion to impose adult sentence
4 fourteen (14) days prior to the start of the preliminary hearing and
5 the preliminary hearing magistrate will rule on that motion. The
6 district attorney must elect when to file the motion for adult
7 sentence and if the motion is filed and argued to the magistrate, it
8 cannot again be filed and argued to the trial court after
9 arraignment; or

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

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

18 C. 1. The court shall order an investigation to be conducted
19 unless waived by the accused person with approval of the court. Any
20 such investigation required shall be conducted by the Office of
21 Juvenile Affairs. All reports, evaluations, motions, records,
22 exhibits or documents generated that are submitted to the court or
23 admitted into evidence during the hearing on the motions for
24 certification as a youthful offender or a juvenile or the motion for

1 imposition of an adult sentence are confidential and shall be filed
2 or admitted under seal, except that such records shall be provided
3 to the Office of Juvenile Affairs. The reports, evaluations,
4 motions, records, exhibits or documents shall be released from under
5 seal by order of the court if the youthful offender is sentenced to
6 the custody or supervision of the Department of Corrections by the
7 court pursuant to either paragraph 1 of subsection B of Section 2-5-
8 209 or paragraph 5 of subsection B of Section 2-5-210 of this title.

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

- 11 a. whether the offense was committed in an aggressive,
12 violent, premeditated or willful manner,
- 13 b. whether the offense was against persons and, if
14 personal injury resulted, the degree of injury,
- 15 c. the record and past history of the accused person,
16 including previous contacts with law enforcement
17 agencies and juvenile or criminal courts, prior
18 periods of probation and commitments to juvenile
19 institutions,
- 20 d. the sophistication and maturity of the accused person
21 and the capability of distinguishing right from wrong
22 as determined by consideration of the psychological
23 evaluation, home, environmental situation, emotional
24 attitude and pattern of living of the accused person,

- 1 e. the prospects for adequate protection of the public if
2 the accused person is processed through the youthful
3 offender system or the juvenile system,
4 f. the reasonable likelihood of rehabilitation of the
5 accused person if the accused person is found to have
6 committed the alleged offense, by the use of
7 procedures and facilities currently available to the
8 juvenile court, and
9 g. whether the offense occurred while the accused person
10 was escaping or on escape status from an institution
11 for youthful offenders or 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 Office of Juvenile Affairs of not less than Twenty-five Dollars
18 (\$25.00), nor more than Five Hundred Dollars (\$500.00), for the
19 presentence or certification investigation. In hardship cases, the
20 court may waive the fee or set the amount of the fee and establish a
21 payment schedule.

22 SECTION 6. AMENDATORY 10A O.S. 2011, Section 2-5-209, is
23 amended to read as follows:

24

1 Section 2-5-209. A. Upon a verdict of guilty or a plea of
2 guilty or nolo contendere of a youthful offender and prior to the
3 imposition of a youthful offender sentence by the court:

4 1. A youthful offender presentence investigation shall be
5 conducted unless waived by the youthful offender with approval of
6 the court or unless an investigation is conducted pursuant to
7 subsection C of Section 2-5-208 of this title. All reports,
8 evaluations, motions, records, exhibits or documents generated that
9 are submitted to the court or admitted into evidence during the
10 hearing on the motion for certification of the accused youthful
11 offender to the juvenile system or motion for imposition of an adult
12 sentence are confidential and shall be filed or admitted under seal,
13 except that such records shall be provided to the Office of Juvenile
14 Affairs. The reports, evaluations, motions, records, exhibits or
15 documents shall be released from under seal by order of the court if
16 the youthful offender is sentenced to the custody or supervision of
17 the Department of Corrections by the court pursuant to paragraph 1
18 of subsection B of Section 2-5-209 or paragraph 5 of subsection B of
19 Section 2-5-210 of this title. Any presentence investigation
20 required by this section shall be conducted by the Office of
21 Juvenile Affairs; and

22 2. The court shall conduct a hearing and shall consider, with
23 the greatest weight given to subparagraphs a, b and c:
24

- 1 a. whether the offense was committed in an aggressive,
2 violent, premeditated or willful manner,
- 3 b. whether the offense was against persons and, if
4 personal injury resulted, the degree of personal
5 injury,
- 6 c. the record and past history of the person, including
7 previous contacts with law enforcement agencies and
8 juvenile or criminal courts, prior periods of
9 probation and commitments to juvenile institutions,
- 10 d. the sophistication and maturity of the person and the
11 capability of distinguishing right from wrong as
12 determined by consideration of the psychological
13 evaluation, home, environmental situation, emotional
14 attitude and pattern of living of the person,
- 15 e. the prospects for adequate protection of the public if
16 the person is processed through the youthful offender
17 system or the juvenile system,
- 18 f. the reasonable likelihood of rehabilitation of the
19 person if found to have committed the offense, by the
20 use of procedures and facilities currently available
21 to the juvenile, and
- 22 g. whether the offense occurred while the person was
23 escaping or on escape status from an institution for
24 youthful offenders or delinquent children.

1 B. 1. After the hearing and consideration of the report of the
2 presentence investigation, the court shall impose sentence as a
3 youthful offender, and such youthful offender shall be subject to
4 the same type of sentencing procedures and duration of sentence,
5 except for capital offenses, including suspension or deferment, as
6 an adult convicted of a felony offense, except that any sentence
7 imposed upon the youthful offender shall be served in the custody or
8 under the supervision of the Office of Juvenile Affairs until the
9 expiration of the sentence, the youthful offender is discharged, or
10 the youthful offender reaches eighteen (18) years of age, whichever
11 first occurs. If an individual sentenced as a youthful offender
12 attains eighteen (18) years of age prior to the expiration of the
13 sentence, such individual shall be returned to the sentencing court.
14 At that time, the sentencing court shall make one of the following
15 determinations:

16 a. whether the youthful offender shall be returned to the
17 Office of Juvenile Affairs to complete a treatment
18 program, provided that the treatment program shall not
19 exceed the youthful offender's attainment of eighteen
20 (18) years of age and ~~five (5)~~ six (6) months. At the
21 conclusion of the treatment program, the individual
22 shall be returned to the sentencing court for a
23 determination under subparagraph b, c or d of this
24 paragraph,

- 1 b. whether the youthful offender shall be placed in the
2 custody of the Department of Corrections,
3 c. whether the youthful offender shall be placed on
4 probation with the Department of Corrections, or
5 d. whether the youthful offender shall be discharged from
6 custody.

7 2. The sentence imposed shall not exceed the maximum sentence
8 already imposed in the originating sentence.

9 3. Upon the youthful offender attaining the age of eighteen
10 (18) years and six (6) months, the Office of Juvenile Affairs may
11 recommend that the youthful offender be returned to the custody or
12 supervision of the Office of Juvenile Affairs until the age of
13 nineteen (19) years to complete the reintegration phase of the
14 treatment program or community supervision as determined by the
15 Office of Juvenile Affairs. During any period of extension, a
16 youthful offender may be transferred to the Department of
17 Corrections as provided in paragraph 5 of subsection B of Section 2-
18 5-210 of this title, whether the youthful offender is placed in an
19 out-of-home placement or in the community.

20 4. If a the court has extended jurisdiction of the youthful
21 ~~offender has attained eighteen (18) years of age but less than~~
22 ~~eighteen (18) years of age and five (5) months prior to sentencing,~~
23 ~~that individual shall be returned to the sentencing court upon~~
24 ~~attaining the age of eighteen (18) years and five (5) months if that~~

1 ~~individual has been sentenced to a period of placement or treatment~~
2 ~~with the Office of Juvenile Affairs~~ until nineteen (19) years of
3 age, the youthful offender shall remain in custody or under the
4 supervision of the Office of Juvenile Affairs until the youthful
5 offender has been discharged or sentenced by the court or until the
6 youthful offender's nineteenth birthday, at which time the youthful
7 offender shall be returned to the court for final disposition of the
8 youthful offender's case. The court shall have the same
9 dispositional options as provided in subparagraphs b, c and d of
10 paragraph 1 of this subsection.

11 ~~4.~~ 5. Any period of probation required by the sentencing court
12 to be served shall be supervised by:

- 13 a. the Office of Juvenile Affairs or designated
14 representative, if the youthful offender is under
15 eighteen (18) years of age, or
16 b. the Department of Corrections or designated
17 representative, upon the youthful offender attaining
18 eighteen (18) years of age.

19 ~~5.~~ 6. In addition to or in lieu of the placement of the
20 youthful offender in the custody of or under the supervision of the
21 Office of Juvenile Affairs, the court may issue orders with regard
22 to the youthful offender as provided by law for the disposition of
23 an adjudicated juvenile delinquent as long as the age of the
24

1 youthful offender does not exceed ~~eighteen (18)~~ nineteen (19) years
2 and ~~five (5)~~ months.

3 ~~6.~~ 7. It is the intent of the Oklahoma Legislature that
4 youthful offenders be held insofar as is practical separate from the
5 juvenile delinquent population.

6 ~~7.~~ 8. The Office of Juvenile Affairs may make recommendations
7 to the court concerning the disposition of the youthful offender.

8 C. A youthful offender who is seventeen (17) or eighteen (18)
9 years of age or older and who has been sentenced to the custody of
10 the Office of Juvenile Affairs may be detained in a county jail
11 pending placement in an Office of Juvenile Affairs facility,
12 provided the county jail meets the jail standards promulgated by the
13 State Department of Health for juvenile offenders. ~~Said~~ The
14 youthful offender who is eighteen (18) years of age or older may be
15 held in the general population of the county jail.

16 SECTION 7. REPEALER 10A O.S. 2011, Section 2-5-101, is
17 hereby repealed.

18 SECTION 8. This act shall become effective November 1, 2018.

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
20 February 27, 2018 - DO PASS AS AMENDED
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22
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