

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL 2311

By: Lawson, Munson, Brewer and
Virgin of the House

6 and

7 Haste of the Senate

8
9 COMMITTEE SUBSTITUTE

10 An Act relating to the Oklahoma Juvenile Code;
11 amending 10A O.S. 2011, Sections 2-2-403, 2-3-101, as
12 last amended by Section 1, Chapter 22, O.S.L. 2020,
13 2-5-204, as amended by Section 4, Chapter 155, O.S.L.
14 2018 and 2-5-209, as amended by Section 9, Chapter
15 155, O.S.L. 2018 (10A O.S. Supp. 2020, Sections 2-3-
16 101, 2-5-204 and 2-5-209), which relate to detention
17 of children in adult facilities; providing for
18 incarceration of juveniles sentenced as adults;
19 prohibiting detainment of children in adult
20 facilities; providing exceptions; requiring hearing
21 and certain findings before confinement of child in
22 adult facility; establishing factors for court to
23 consider; affording certain rights and protections to
24 child; providing for detention of youthful offenders;
and providing an effective date.

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

SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-2-403, is
amended to read as follows:

Section 2-2-403. A. Except as otherwise provided by law, if a
child is charged with a delinquent act as a result of an offense

1 which would be a felony if committed by an adult, the court on its
2 own motion or at the request of the district attorney shall conduct
3 a preliminary hearing to determine whether or not there is
4 prosecutive merit to the complaint. If the court finds that
5 prosecutive merit exists, it shall continue the hearing for a
6 sufficient period of time to conduct an investigation and further
7 hearing to determine if the child should be held accountable for
8 acts of the child as if the child were an adult if the child should
9 be found to have committed the alleged act or omission.

10 Consideration shall be given to:

11 1. The seriousness of the alleged offense to the community, and
12 whether the alleged offense was committed in an aggressive, violent,
13 premeditated or willful manner;

14 2. Whether the offense was against persons or property, greater
15 weight being given to transferring the accused person to the adult
16 criminal justice system for offenses against persons and, if
17 personal injury resulted, the degree of personal injury;

18 3. The sophistication and maturity of the juvenile and
19 capability of the juvenile of distinguishing right from wrong as
20 determined by consideration of a psychological evaluation of the
21 juvenile, home, environmental situation, emotional attitude and
22 pattern of living;

23 4. The record and previous history of the accused person,
24 including previous contacts with community agencies, law enforcement

1 agencies, schools, juvenile or criminal courts and other
2 jurisdictions, prior periods of probation or prior commitments to
3 juvenile institutions;

4 5. The prospects for adequate protection of the public;

5 6. The likelihood of reasonable rehabilitation of the juvenile
6 if the juvenile is found to have committed the alleged offense, by
7 the use of procedures and facilities currently available to the
8 juvenile court; and

9 7. Whether the offense occurred while the juvenile was escaping
10 or in an escape status from an institution for delinquent children.

11 After the investigation and hearing, the court may in its
12 discretion proceed with the juvenile proceeding, or it shall state
13 its reasons in writing and shall certify, based on clear and
14 convincing evidence, that the child shall be held accountable for
15 acts of the child as if the child were an adult and shall be held
16 for proper criminal proceedings for the specific offense charged, by
17 any other division of the court which would have trial jurisdiction
18 of the offense if committed by an adult. The juvenile proceeding
19 shall not be dismissed until the criminal proceeding has commenced
20 and if no criminal proceeding commences within thirty (30) days of
21 the date of the certification, unless stayed pending appeal, the
22 court shall proceed with the juvenile proceeding and the
23 certification shall lapse.

24

1 If not included in the original summons, notice of a hearing to
2 consider whether a child should be certified for trial as an adult
3 shall be given to all persons who are required to be served with a
4 summons at the commencement of a juvenile proceeding, but
5 publication in a newspaper when the address of a person is unknown
6 is not required. The purpose of the hearing shall be clearly stated
7 in the notice.

8 B. Prior to the entry of any order of certification, any child
9 in custody shall have the same right to be released upon bail as
10 would an adult under the same circumstances. Subsequent to the
11 entry of an order that a child stand trial as an adult, the child
12 shall have all the statutory and constitutional rights and
13 ~~protections of an adult accused of a crime but shall, while awaiting~~
14 ~~trial and for the duration of the trial, be detained in a jail cell~~
15 ~~or ward entirely separate from prisoners who are eighteen (18) years~~
16 ~~of age or over.~~ Upon conviction, the juvenile may be incarcerated
17 with the adult population in an adult jail, adult lockup, adult
18 detention facility or other adult facility if that facility is
19 licensed by the State Department of Health to detain children under
20 eighteen (18) years of age while the person is awaiting housing by
21 the Department of Corrections. If, prior to the entry of any order
22 of certification, the child becomes eighteen (18) years of age, the
23 child may be detained in a county jail or released on bail. If a
24 child is certified to stand trial as an adult, the court shall make

1 every effort to avoid duplication of the adult preliminary hearing
2 and the prosecutorial hearing in the juvenile certification process.
3 The parties may jointly stipulate to the court that the record for
4 the prosecutorial merit hearing in the juvenile proceeding be used
5 for all or part of the preliminary hearing.

6 C. Any child who has been certified to stand trial as an adult
7 pursuant to any order entered by any competent court of this state
8 or any other state shall be tried as an adult in all subsequent
9 criminal prosecutions, and shall not be subject to the jurisdiction
10 of the juvenile court or be eligible to be tried as a youthful
11 offender in any further proceedings.

12 D. An order either certifying a person as a child or an adult
13 pursuant to subsection A of this section or denying such
14 certification shall be a final order, appealable when entered and
15 shall not be modified.

16 SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-3-101, as
17 last amended by Section 1, Chapter 22, O.S.L. 2020 (10A O.S. Supp.
18 2020, Section 2-3-101), is amended to read as follows:

19 Section 2-3-101. A. When a child is taken into custody
20 pursuant to the provisions of the Oklahoma Juvenile Code, the child
21 shall be detained only if it is necessary to assure the appearance
22 of the child in court or for the protection of the child or the
23 public.

24

1 1. a. No child twelve (12) years of age or younger shall be
2 placed in a juvenile detention facility unless all
3 alternatives have been exhausted and the child is
4 currently charged with a criminal offense that would
5 constitute a felony if committed by an adult and it
6 has been indicated by a risk-assessment screening that
7 the child requires detention. The detention of any
8 child twelve (12) years of age or younger shall be
9 judicially reviewed pursuant to subparagraph c of this
10 paragraph.

11 b. Any child who is thirteen (13) or fourteen (14) years
12 of age may be admitted to a juvenile detention
13 facility only after all alternatives have been
14 exhausted and the child is currently charged with a
15 criminal offense that would constitute a felony if
16 committed by an adult and it has been indicated by a
17 risk-assessment screening that the child requires
18 detention.

19 c. No preadjudicatory or predisposition detention or
20 custody order shall remain in force and effect for
21 more than thirty (30) days. The court, for good and
22 sufficient cause shown, may extend the effective
23 period of such an order for an additional period not
24 to exceed sixty (60) days. If the child is being

1 detained for the commission of a murder, the court
2 may, if it is in the best interests of justice, extend
3 the effective period of such an order an additional
4 sixty (60) days.

5 d. Whenever the court orders a child to be held in a
6 juvenile detention facility, an order for secure
7 detention shall remain in force and effect for not
8 more than fifteen (15) days after such order. Upon an
9 application of the district attorney and after a
10 hearing on such application, the court, for good and
11 sufficient cause shown, may extend the effective
12 period of such an order for an additional period not
13 to exceed fifteen (15) days after such hearing. The
14 total period of preadjudicatory or predisposition
15 shall not exceed the ninety-day limitation as
16 specified in subparagraph a of this paragraph. The
17 child shall be present at the hearing on the
18 application for extension unless, as authorized and
19 approved by the court, the attorney for the child is
20 present at the hearing and the child is available to
21 participate in the hearing via telephone conference
22 communication. For the purpose of this paragraph,
23 "telephone conference communication" means use of a
24 telephone device that allows all parties, including

1 the child, to hear and be heard by the other parties
2 at the hearing. After the hearing, the court may
3 order continued detention in a juvenile detention
4 center, may order the child detained in an alternative
5 to secure detention or may order the release of the
6 child from detention.

7 2. No child alleged or adjudicated to be deprived or in need of
8 supervision or who is or appears to be a minor in need of treatment
9 as defined by the Inpatient Mental Health and Substance Abuse
10 Treatment of Minors Act, shall be confined in any jail, adult
11 lockup, or adult detention facility. No child shall be transported
12 or detained in association with criminal, vicious, or dissolute
13 persons.

14 3. Except as otherwise authorized by this section a child who
15 has been taken into custody as a deprived child, a child in need of
16 supervision, or who appears to be a minor in need of treatment, may
17 not be placed in any detention facility pending court proceedings,
18 but must be placed in shelter care or foster care or, with regard to
19 a child who appears to be a minor in need of treatment, a behavioral
20 health treatment facility in accordance with the provisions of the
21 Inpatient Mental Health and Substance Abuse Treatment of Minors Act,
22 or released to the custody of the parents of the child or some other
23 responsible party. Provided, this shall not preclude runaway
24 juveniles from other states, with or without delinquent status, to

1 be held in a detention facility in accordance with the Interstate
2 Compact for Juveniles in Sections 2-9-101 through 2-9-116 of this
3 title and rules promulgated by the Interstate Commission.

4 B. No child shall be placed in secure detention unless:

5 1. The child is an escapee from any delinquent placement;

6 2. The child is a fugitive from another jurisdiction with a
7 warrant on a delinquency charge or confirmation of delinquency
8 charges by the home jurisdiction;

9 3. The child is seriously assaultive or destructive towards
10 others or self;

11 4. The child is currently charged with any criminal offense
12 that would constitute a felony if committed by an adult or a
13 misdemeanor and:

14 a. is on probation or parole on a prior delinquent
15 offense,

16 b. is on preadjudicatory community supervision, or

17 c. is currently on release status on a prior delinquent
18 offense;

19 5. The child has willfully failed or there is reason to believe
20 that the child will willfully fail to appear for juvenile court
21 proceedings;

22 6. A warrant for the child has been issued on the basis that:

23 a. the child is absent from court-ordered placement
24 without approval by the court,

1 b. the child is absent from designated placement by the
2 Office of Juvenile Affairs without approval by the
3 Office of Juvenile Affairs,

4 c. there is reason to believe the child will not remain
5 at said placement, or

6 d. the child is subject to an administrative transfer or
7 parole revocation proceeding.

8 C. A child who has violated a court order and has had the order
9 revoked or modified pursuant to Section 2-2-503 of this title may be
10 placed into an Office-of-Juvenile-Affairs-designated sanction
11 detention bed or an Office-of-Juvenile-Affairs-approved sanction
12 program.

13 D. Priority shall be given to the use of juvenile detention
14 facilities for the detention of juvenile offenders through
15 provisions requiring the removal from detention of a juvenile with a
16 lower priority status if an empty detention bed is not available at
17 the time of referral of a juvenile with a higher priority status and
18 if the juvenile with a higher priority status would be more of a
19 danger to the public than the juvenile with the lower priority
20 status.

21 E. Juvenile detention facilities shall be the initial placement
22 for all persons under eighteen (18) years of age. No child shall be
23 placed in secure detention in an adult jail, adult lockup, adult
24

1 detention facility or other adult facility except as provided in
2 this section.

3 1. Any child who is at least fifteen (15) years of age who is
4 charged with murder in the first degree may be detained in an adult
5 jail, adult lockup, adult detention facility or other adult facility
6 only after a hearing in which the child is provided representation
7 and the court makes a written finding that it is in the interest of
8 justice that the child be placed in an adult jail, adult lockup,
9 adult detention facility or other adult facility.

10 2. In determining whether it is in the interest of justice that
11 a child who is at least fifteen (15) years of age and who is charged
12 with murder in the first degree be placed in an adult jail, adult
13 lockup, adult detention facility or other adult facility, the court
14 shall consider:

- 15 a. the age of the child,
16 b. the physical and mental maturity of the child,
17 c. the present mental state of the child, including
18 whether the child presents an imminent risk of harm to
19 the child,
20 d. the nature and circumstances of the alleged offense,
21 e. the child's history of prior delinquent acts,
22 f. the relative ability of the available adult and
23 juvenile detention facilities to not only meet the
24 specific needs of the child but also to protect the

1 safety of the public as well as other detained youth,
2 and

3 g. any other relevant factors.

4 3. If a court determines that it is in the interest of justice
5 that the child be placed in an adult jail, adult lockup, adult
6 detention facility or other adult facility:

7 a. the court shall hold a hearing not less frequently
8 than once every thirty (30) days, or in the case of a
9 rural jurisdiction, which is any jurisdiction not
10 located in a metropolitan statistical area, as defined
11 by the United States Office of Management and Budget,
12 not less frequently than once every forty-five (45)
13 days, to review whether it is still in the interest of
14 justice to permit the juvenile to be so held or have
15 such sight and sound contact, and

16 b. the child shall not be held in any adult jail or
17 lockup for adults or be permitted to have sight or
18 sound contact with adult inmates for more than one
19 hundred eighty (180) days, unless the court, in
20 writing, determines there is good cause for an
21 extension or the child expressly waives this
22 limitation.

23 F. When a child is placed in an adult jail, adult lockup, adult
24 detention facility or other adult facility, he or she shall be

1 afforded the following rights and protections in order to address
2 the child's health and safety:

3 1. A copy of the child's most current mental health or suicide
4 screening instrument approved by the Office of Juvenile Affairs
5 shall be provided to the adult jail, adult lockup or adult detention
6 facility at the time of the child's transfer; and

7 2. Adult jails, adult lockups, adult detention facilities or
8 other adult facilities shall process requests for visits and allow
9 approved visitors contact visits with the child within five (5)
10 business days of the request.

11 G. 1. Except as otherwise provided in this section, no child
12 shall be placed in secure detention in a ~~an~~ adult jail, adult
13 lockup, ~~or other~~ adult detention facility or other adult facility
14 unless:

15 a. ~~the child is detained for the commission of a crime~~
16 ~~that would constitute a felony if committed by an~~
17 ~~adult, and~~

18 b. ~~the child is awaiting an initial court appearance, and~~
19 ~~the initial court appearance of the child is scheduled~~
20 ~~within twenty-four (24) hours after being taken into~~
21 ~~custody, excluding weekends and holidays, and~~

22 d. ~~the court of jurisdiction is outside of the Standard~~
23 ~~Metropolitan Statistical Area as defined by the Bureau~~
24 ~~of Census, and~~

1 e. ~~there is no existing acceptable alternative placement~~
2 ~~for the child, and~~

3 ~~f.~~ the adult jail, adult lockup or adult detention
4 facility provides sight and sound separation for
5 juveniles, pursuant to standards required by
6 subsection E of Section 2-3-103 of this title, ~~or~~ and

7 ~~g.~~

8 b. the adult jail, adult lockup or adult detention
9 facility meets the requirements for licensure of
10 juvenile detention facilities, as adopted by the
11 Office of Juvenile Affairs, is appropriately licensed,
12 and provides sight and sound separation for juveniles,
13 which includes:

14 (1) total separation between juveniles and adult
15 facility spatial areas such that there could be
16 no haphazard or accidental contact between
17 juvenile and adult residents in the respective
18 facilities,

19 (2) total separation in all juvenile and adult
20 program activities within the facilities,
21 including recreation, education, counseling,
22 health care, dining, sleeping and general living
23 activities, and

1 (3) separate juvenile and adult staff, specifically
2 direct care staff such as recreation, education
3 and counseling.

4 Specialized services staff, such as cooks,
5 bookkeepers, and medical professionals who are not
6 normally in contact with detainees or whose infrequent
7 contacts occur under conditions of separation of
8 juveniles and adults can serve both.

9 2. Nothing in this section shall preclude a child who is
10 detained for the commission of a crime that would constitute a
11 felony if committed by an adult, or a child who is an escapee from a
12 juvenile secure facility or from an Office of Juvenile Affairs group
13 home from being held in any jail certified by the State Department
14 of Health, police station or similar law enforcement offices for up
15 to six (6) hours for purposes of identification, processing or
16 arranging for transfer to a secure detention or alternative to
17 secure detention. Such holding shall be limited to the absolute
18 minimum time necessary to complete these actions.

19 a. The time limitations for holding a child in a jail for
20 the purposes of identification, processing or
21 arranging transfer established by this section shall
22 not include the actual travel time required for
23 transporting a child from a jail to a juvenile
24 detention facility or alternative to secure detention.

1 b. Whenever the time limitations established by this
2 subsection are exceeded, this circumstance shall not
3 constitute a defense in a subsequent delinquency or
4 criminal proceeding.

5 3. Nothing in this section shall preclude detaining in a county
6 jail or other adult detention facility an eighteen-year-old charged
7 in a juvenile petition for whom certification to stand trial as an
8 adult is prayed. However, if no certification motion is filed, the
9 eighteen-year-old may remain in a juvenile detention facility as
10 long as secure detention is required.

11 4. Nothing in this section shall preclude detaining in a county
12 jail or other adult detention facility a person provided for in
13 Section 2-3-102 of this title if written or electronically
14 transmitted confirmation is received from the state seeking return
15 of the individual that the person is a person provided for in
16 Section 2-3-102 of this title and if, during the time of detention,
17 the person is detained in a facility meeting the requirements of
18 Section 2-3-103 of this title.

19 5. Nothing in this section shall preclude detaining a person,
20 whose age is not immediately ascertainable and who is being detained
21 for the commission of a felony, in a jail certified by the State
22 Department of Health, a police station or similar law enforcement
23 office for up to twenty-four (24) hours for the purpose of
24 determining whether or not the person is a child, if:

- 1 a. there is a reasonable belief that the person is
2 eighteen (18) years of age or older,
3 b. there is a reasonable belief that a felony has been
4 committed by the person,
5 c. a court order for such detention is obtained from a
6 judge of the district court within six (6) hours of
7 initially detaining the person,
8 d. there is no juvenile detention facility that has space
9 available for the person and that is within thirty
10 (30) miles of the jail, police station, or law
11 enforcement office in which the person is to be
12 detained, and
13 e. during the time of detention the person is detained in
14 a facility meeting the requirements of subparagraph g
15 b of paragraph 1 of this subsection.

16 The time limitation provided for in this paragraph shall include the
17 time the person is detained prior to the issuance of the court
18 order.

19 The time limitation provided for in this paragraph shall not include
20 the actual travel time required for transporting the person to the
21 jail, police station, or similar law enforcement office. If the
22 time limitation established by this paragraph is exceeded, this
23 circumstance shall not constitute a defense in any subsequent
24 delinquency or criminal proceeding.

1 ~~F.~~ H. Nothing contained in this section shall in any way reduce
2 or eliminate the liability of a county as otherwise provided by law
3 for injury or damages resulting from the placement of a child in a
4 an adult jail, adult lockup, ~~or other~~ adult detention facility or
5 other adult facility.

6 ~~G.~~ I. Any juvenile detention facility shall be available for
7 use by any eligible Indian child as that term is defined by the
8 Oklahoma Indian Child Welfare Act, providing that the use of the
9 juvenile detention facility meets the requirements of the Oklahoma
10 Juvenile Code. The Indian tribe may contract with any juvenile
11 detention facility for the providing of detention services.

12 ~~H.~~ J. Each member of the staff of a juvenile detention facility
13 shall satisfactorily complete a training program provided or
14 approved by the Office of Juvenile Affairs.

15 ~~F.~~ K. Whenever a juvenile is placed in any adult jail, adult
16 lockup, ~~or other~~ adult detention facility or other adult facility,
17 the Office of Juvenile Affairs shall have access to all facilities
18 which detain such juveniles and shall have access to any data
19 regarding such juveniles. The Office of Juvenile Affairs shall have
20 access to all adult jails, adult lockups, adult detention facilities
21 or other adult facilities in this state, including all data
22 maintained by such facilities, to assure compliance with this
23 section. The Board of Juvenile Affairs shall promulgate rules as
24 necessary to implement the provisions of this section.

1 SECTION 3. AMENDATORY 10A O.S. 2011, Section 2-5-204, as
2 amended by Section 4, Chapter 155, O.S.L. 2018 (10A O.S. Supp. 2020,
3 Section 2-5-204), is amended to read as follows:

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

9 B. If the child is not otherwise represented by counsel and
10 requests an attorney prior to or during interrogation, or whenever
11 charged by information, as provided in subsection A of this section,
12 the court shall appoint an attorney, who shall not be a district
13 attorney, for the child regardless of any attempted waiver by the
14 parent, legal guardian, or other legal custodian of the child of the
15 right of the child to be represented by counsel. Counsel shall be
16 appointed by the court only upon determination by the court that the
17 parent, legal guardian or legal custodian is found to be indigent.

18 C. When a person is certified to stand trial as an adult or a
19 youthful offender as provided by the Youthful Offender Act, the
20 accused person shall have all the statutory and constitutional
21 rights and protections of an adult accused of a crime. All
22 proceedings shall be as for a criminal action and the provisions of
23 Title 22 of the Oklahoma Statutes shall apply, except as provided
24 for in the Youthful Offender Act.

1 D. All youthful offender court records for a person who is
2 certified to stand trial as an adult or youthful offender shall be
3 considered adult records and shall not be subject to the provisions
4 of Chapter 6 of the Oklahoma Juvenile Code; provided, however, all
5 reports, evaluations, motions, records, exhibits or documents
6 regarding the educational history, mental health or medical
7 treatment or condition of the offender that are submitted to the
8 court or admitted into evidence during the hearing on the motion for
9 certification as a youthful offender to the juvenile system or
10 motion for imposition of an adult sentence shall be confidential and
11 shall be filed or admitted under seal, except that such records
12 shall be provided to the Office of Juvenile Affairs. Any testimony
13 regarding the reports, evaluations, motions, records, exhibits or
14 documents shall be given in camera and shall not be open to the
15 general public; provided, all persons having a direct interest in
16 the case as provided in paragraph 1 of subsection A of Section 2-2-
17 402 of this title shall be allowed to be present during the
18 testimony but shall be admonished not to discuss the testimony
19 following the hearing. All reports, evaluations, motions, records,
20 exhibits or documents shall be released from under seal by order of
21 the court if the youthful offender is sentenced to the custody or
22 supervision of the Department of Corrections by the court pursuant
23 to paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of

24

1 subsection B of Section 2-5-210 of this title or if the juvenile or
2 youthful offender is later charged as an adult with a felony crime.

3 E. Proceedings against a youthful offender shall be heard by
4 any judge of the district court.

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

15 G. Upon certification for the imposition of an adult sentence,
16 a verdict of guilty or entry of a plea of guilty or nolo contendere
17 by a youthful offender who has been certified for the imposition of
18 an adult sentence as provided by Section 2-5-208 of this title, the
19 person may be detained ~~as an adult and, if incarcerated, may be~~
20 ~~incarcerated with the adult population~~ in an adult jail, adult
21 lockup, adult detention facility or other adult facility if that
22 facility is licensed by the State Department of Health to detain
23 children under eighteen (18) years of age while the person is
24 awaiting housing by the Department of Corrections.

1 H. A child or youthful offender shall be tried as an adult in
2 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 I. Except as otherwise provided in the Youthful Offender Act, a
15 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 4. AMENDATORY 10A O.S. 2011, Section 2-5-209, as
23 amended by Section 9, Chapter 155, O.S.L. 2018 (10A O.S. Supp. 2020,
24 Section 2-5-209), is amended to read as follows:

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 regarding the
9 educational history, mental health or medical treatment or condition
10 of the offender that are submitted to the court or admitted into
11 evidence during the hearing on the motion for certification of the
12 accused youthful offender to the juvenile system or motion for
13 imposition of an adult sentence are confidential and shall be filed
14 or admitted under seal, except that such records shall be provided
15 to the Office of Juvenile Affairs. Any testimony regarding the
16 reports, evaluations, motions, records, exhibits or documents shall
17 be given in camera and shall not be open to the general public;
18 provided, all persons having a direct interest in the case as
19 provided in paragraph 1 of subsection A of Section 2-2-402 of this
20 title shall be allowed to be present during the testimony but shall
21 be admonished not to discuss the testimony following the hearing.
22 All reports, evaluations, motions, records, exhibits or documents
23 shall be released from under seal by order of the court if the
24 youthful offender is sentenced to the custody or supervision of the

1 Department of Corrections by the court pursuant to paragraph 1 of
2 subsection B of ~~Section 2-5-209~~ this section or paragraph 5 of
3 subsection B of Section 2-5-210 of this title or if the juvenile or
4 youthful offender is later charged as an adult with a felony crime.
5 Any presentence investigation required by this section shall be
6 conducted by the Office of Juvenile Affairs; and

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

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

- 1 e. the prospects for adequate protection of the public if
2 the person is processed through the youthful offender
3 system or the juvenile system,
- 4 f. the reasonable likelihood of rehabilitation of the
5 person if found to have committed the offense, by the
6 use of procedures and facilities currently available
7 to the juvenile, and
- 8 g. whether the offense occurred while the person was
9 escaping or on escape status from an institution for
10 youthful offenders or delinquent children.

11 B. 1. After the hearing and consideration of the report of the
12 presentence investigation, the court shall impose sentence as a
13 youthful offender, and such youthful offender shall be subject to
14 the same type of sentencing procedures and duration of sentence,
15 except for capital offenses, including suspension or deferment, as
16 an adult convicted of a felony offense, except that any sentence
17 imposed upon the youthful offender shall be served in the custody or
18 under the supervision of the Office of Juvenile Affairs until the
19 expiration of the sentence, the youthful offender is discharged, or
20 the youthful offender reaches eighteen (18) years of age, whichever
21 first occurs. If an individual sentenced as a youthful offender
22 attains eighteen (18) years of age prior to the expiration of the
23 sentence, such individual shall be returned to the sentencing court.

1 At that time, the sentencing court shall make one of the following
2 determinations:

3 a. whether the youthful offender shall be returned to the
4 Office of Juvenile Affairs to complete a treatment
5 program, provided that the treatment program shall not
6 exceed the youthful offender's attainment of eighteen
7 (18) years and six (6) months of age. At the
8 conclusion of the treatment program, the individual
9 shall be returned to the sentencing court for a
10 determination under subparagraph b, c or d of this
11 paragraph,

12 b. whether the youthful offender shall be placed in the
13 custody of the Department of Corrections,

14 c. whether the youthful offender shall be placed on
15 probation with the Department of Corrections, or

16 d. whether the youthful offender shall be discharged from
17 custody.

18 2. The sentence imposed shall not exceed the maximum sentence
19 already imposed in the originating sentence.

20 3. Upon the youthful offender attaining the age of eighteen
21 (18) years and six (6) months, the Office of Juvenile Affairs may
22 recommend that the youthful offender be returned to the custody or
23 supervision of the Office of Juvenile Affairs until the age of
24 nineteen (19) years to complete the reintegration phase of the

1 treatment program or community supervision as determined by the
2 Office of Juvenile Affairs. During any period of extension, a
3 youthful offender may be transferred to the Department of
4 Corrections as provided in paragraph 5 of subsection B of Section 2-
5 5-210 of this title, whether the youthful offender is placed in an
6 out-of-home placement or in the community.

7 4. If the court has extended jurisdiction of the youthful
8 offender until nineteen (19) years of age, the youthful offender
9 shall remain in custody or under the supervision of the Office of
10 Juvenile Affairs until the youthful offender has been discharged or
11 sentenced by the court or until the youthful offender's nineteenth
12 birthday, at which time the youthful offender shall be returned to
13 the court for final disposition of the youthful offender's case.
14 The court shall have the same dispositional options as provided in
15 subparagraphs b, c and d of paragraph 1 of this subsection.

16 5. Any period of probation required by the sentencing court to
17 be served shall be supervised by:

- 18 a. the Office of Juvenile Affairs or designated
19 representative, if the youthful offender is under
20 eighteen (18) years of age, or
21 b. the Department of Corrections or designated
22 representative, upon the youthful offender attaining
23 eighteen (18) years of age.

24

1 6. In addition to or in lieu of the placement of the youthful
2 offender in the custody of or under the supervision of the Office of
3 Juvenile Affairs, the court may issue orders with regard to the
4 youthful offender as provided by law for the disposition of an
5 adjudicated juvenile delinquent as long as the age of the youthful
6 offender does not exceed nineteen (19) years.

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

10 8. The Office of Juvenile Affairs may make recommendations to
11 the court concerning the disposition of the youthful offender.

12 9. Any order issued by the sentencing court under this
13 subsection shall be a final order, appealable when entered.

14 C. A youthful offender who is ~~seventeen (17) or~~ eighteen (18)
15 years of age or older and who has been sentenced to the custody of
16 the Office of Juvenile Affairs may be detained in a county jail
17 pending placement in an Office of Juvenile Affairs facility~~7~~
18 ~~provided the county jail meets the jail standards promulgated by the~~
19 ~~State Department of Health for juvenile offenders. The youthful~~
20 ~~offender who is eighteen (18) years of age or older and~~ and may be held
21 in the general population of the county jail.

22 SECTION 5. This act shall become effective November 1, 2021.

23

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