

1 ENGROSSED SENATE  
2 BILL NO. 310

By: Murdock, Montgomery and  
Bergstrom of the Senate

3 and

4 West (Josh) of the House  
5  
6

7 An Act relating to youthful offenders; amending 10A  
8 O.S. 2011, Sections 2-5-205 and 2-5-206, as amended  
9 by Sections 5 and 6, Chapter 155, O.S.L. 2018 (10A  
10 O.S. Supp. 2020, Sections 2-5-205 and 2-5-206), which  
11 relate to certification as youthful offender and acts  
12 mandating youthful offender status; prohibiting  
13 youthful offender status for person charged with  
14 certain crimes; requiring court to consider certain  
15 victim statements; conforming language; and providing  
16 an effective date.

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

18 SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-5-205, as  
19 amended by Section 5, Chapter 155, O.S.L. 2018 (10A O.S. Supp. 2020,  
20 Section 2-5-205), is amended to read as follows:

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

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

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

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

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

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

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

1 D. 1. The accused person shall file any motions for  
2 certification as a youthful offender or a juvenile before the start  
3 of the criminal preliminary hearing. If both a motion for  
4 certification as a youthful offender and a motion for certification  
5 as a juvenile are filed, they shall both be heard at the same time.  
6 No motion for certification as a youthful offender or certification  
7 as a juvenile may be filed after the time specified in this  
8 subsection. Upon the filing of such motion, the complete juvenile  
9 record of the accused shall be made available to the district  
10 attorney and the accused person. All reports, evaluations, motions,  
11 records, exhibits or documents regarding the educational history,  
12 mental health or medical treatment or condition of the offender that  
13 are submitted to the court or admitted into evidence during the  
14 hearing on the motion for certification as a youthful offender to  
15 the juvenile system or motion for imposition of an adult sentence  
16 are confidential and shall be filed or admitted under seal, except  
17 that such records shall be provided to the Office of Juvenile  
18 Affairs. Any testimony regarding the reports, evaluations, motions,  
19 records, exhibits or documents shall be given in camera and shall  
20 not be open to the general public; provided, all persons having a  
21 direct interest in the case as provided in paragraph 1 of subsection  
22 A of Section 2-2-402 of this title shall be allowed to be present  
23 during the testimony but shall be admonished not to discuss the  
24 testimony following the hearing. All reports, evaluations, motions,

1 records, exhibits or documents shall be released from under seal by  
2 order of the court if the youthful offender is sentenced to the  
3 custody or supervision of the Department of Corrections by the court  
4 pursuant to either paragraph 1 of subsection B of Section 2-5-209 or  
5 paragraph 5 of subsection B of Section 2-5-210 of this title or if  
6 the juvenile or youthful offender is later charged as an adult with  
7 a felony crime.

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

1 providing information in locating the parents of the accused,  
2 guardian, or next friend for purpose of notice waives the right to  
3 have the preliminary hearing commence within ninety (90) days of the  
4 filing of the information. If the preliminary hearing did not  
5 commence within ninety (90) days from the filing of the information  
6 due to the absence or inability to locate the accused, the  
7 preliminary hearing shall commence within ninety (90) days after the  
8 state has actual notice of the in-state location of the accused. If  
9 the accused is found out of state, the court shall set the hearing  
10 within ninety (90) days after the accused has been returned to the  
11 State of Oklahoma.

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

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

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

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1           2. Whether the offense was against persons, and, if personal  
2 injury resulted, the degree of personal injury, and the statements  
3 of the victim or victims;

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

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

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

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

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

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

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

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

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

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

16 SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-5-206, as  
17 amended by Section 6, Chapter 155, O.S.L. 2018 (10A O.S. Supp. 2020,  
18 Section 2-5-206), is amended to read as follows:

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

- 21 1. Murder in the second degree;
- 22 2. Kidnapping;
- 23 3. Manslaughter in the first degree;

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1           4. Robbery with a dangerous weapon or a firearm or attempt  
2 thereof;  
3           5. Robbery in the first degree or attempt thereof;  
4           6. ~~Rape in the first degree or attempt thereof;~~  
5           7. Rape by instrumentation or attempt thereof;  
6           8. ~~7.~~ 7. Forcible sodomy;  
7           9. ~~8.~~ 8. Lewd molestation;  
8           10. ~~9.~~ 9. Arson in the first degree or attempt thereof; or  
9           11. ~~10.~~ 10. Any offense in violation of Section 652 of Title 21 of  
10 the Oklahoma Statutes,  
11 shall be held accountable for such acts as a youthful offender.

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

14           1. Burglary in the first degree or attempted burglary in the  
15 first degree;

16           2. Battery or assault and battery on a state employee or  
17 contractor while in the custody or supervision of the Office of  
18 Juvenile Affairs;

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

20           4. Intimidating a witness;

21           5. Trafficking in or manufacturing illegal drugs;

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

23           7. Maiming;

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1 8. Residential burglary in the second degree after two or more  
2 adjudications that are separated in time for delinquency for  
3 committing burglary in the first degree or residential burglary in  
4 the second degree;

5 9. Rape in the second degree; or

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

8 C. The district attorney may file a petition alleging the  
9 person to be a delinquent or may file an information against the  
10 accused person charging the person as a youthful offender. The  
11 district attorney shall notify the Office of Juvenile Affairs upon  
12 the filing of youthful offender charges.

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

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

22 3. When personal service of a custodial parent, guardian or  
23 next friend of the alleged youthful offender cannot be effected,  
24 service may be made by certified mail to the last-known address of

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

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

20 E. The court shall commence a preliminary hearing within ninety  
21 (90) days of the filing of the information pursuant to Section 258  
22 of Title 22 of the Oklahoma Statutes, to determine whether the crime  
23 was committed and whether there is probable cause to believe the  
24 accused person committed the crime. If the preliminary hearing is

1 not commenced within ninety (90) days, the state shall be prohibited  
2 from seeking an adult sentence unless the ninety-day requirement is  
3 waived by the defendant. If the whereabouts of the accused are  
4 unknown at the time of the filing of the information or if the  
5 accused is a fugitive, the State of Oklahoma shall make reasonable  
6 efforts to locate the accused in order to commence the proceedings.  
7 An accused who flees the jurisdiction of the court or purposely  
8 avoids apprehension for the charges, waives the right to have the  
9 preliminary hearing commenced within ninety (90) days of the filing  
10 of the information. If the preliminary hearing did not commence  
11 within ninety (90) days from the filing of the information due to  
12 the absence or inability to locate the accused, the preliminary  
13 hearing shall commence within ninety (90) days after the state has  
14 actual notice of the in-state location of the accused. If the  
15 accused is found out of state, the court shall set the hearing  
16 within ninety (90) days after the accused has been returned to the  
17 State of Oklahoma. An accused who fails to cooperate with providing  
18 information in locating the accused parent, guardian, or next friend  
19 for purpose of notice waives the right to have the preliminary  
20 hearing commence within ninety (90) days of the filing of the  
21 information.

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

1           a.    upon the filing of such motion, the complete juvenile  
2                    record of the accused shall be made available to the  
3                    district attorney and the accused person,

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

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

13           3.    All reports, evaluations, motions, records, exhibits or  
14                   documents regarding the educational history, mental health or  
15                   medical treatment or condition of the offender that are submitted to  
16                   the court or admitted into evidence during the hearing on the motion  
17                   for certification of the accused youthful offender to the juvenile  
18                   system or motion for imposition of an adult sentence are  
19                   confidential and shall be filed or admitted under seal, except that  
20                   such records shall be provided to the Office of Juvenile Affairs.  
21                   Any testimony regarding the reports, evaluations, motions, records,  
22                   exhibits or documents shall be given in camera and shall not be open  
23                   to the general public; provided, all persons having a direct  
24                   interest in the case as provided in paragraph 1 of subsection A of

1 Section 2-2-402 of this title shall be allowed to be present during  
2 the testimony but shall be admonished not to discuss the testimony  
3 following the hearing. All reports, evaluations, motions, records,  
4 exhibits or documents shall be released from under seal by order of  
5 the court if the youthful offender is sentenced to the custody or  
6 supervision of the Department of Corrections by the court pursuant  
7 to either paragraph 1 of subsection B of Section 2-5-209 or  
8 paragraph 5 of subsection B of Section 2-5-210 of this title or if  
9 the juvenile or youthful offender is later charged as an adult with  
10 a felony crime.

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

- 16 a. whether the alleged offense was committed in an  
17 aggressive, violent, premeditated or willful manner,  
18 b. whether the offense was against persons, and if  
19 personal injury resulted, the degree of personal  
20 injury, and the statements of the victim or victims,  
21 c. the record and past history of the accused person,  
22 including previous contacts with law enforcement  
23 agencies and juvenile or criminal courts, prior  
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1 periods of probation and commitments to juvenile  
2 institutions,

3 d. the sophistication and maturity of the accused person  
4 and the accused person's capability of distinguishing  
5 right from wrong as determined by consideration of the  
6 accused person's psychological evaluation, home,  
7 environmental situation, emotional attitude and  
8 pattern of living,

9 e. the prospects for adequate protection of the public if  
10 the accused person is processed through the youthful  
11 offender system or the juvenile system,

12 f. the reasonable likelihood of rehabilitation of the  
13 accused person if the accused is found to have  
14 committed the alleged offense, by the use of  
15 procedures and facilities currently available to the  
16 juvenile court, and

17 g. whether the offense occurred while the accused person  
18 was escaping or in an escape status from an  
19 institution for youthful offenders or juvenile  
20 delinquents.

21 5. In its decision on the motion for certification as an  
22 alleged juvenile delinquent, the court shall detail findings of fact  
23 and conclusions of law to each of the above considerations and shall  
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1 state that the court has considered each of the guidelines in  
2 reaching its decision.

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

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

11 SECTION 3. This act shall become effective November 1, 2021.

12 Passed the Senate the 9th day of March, 2021.

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Presiding Officer of the Senate

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16 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
17 2021.

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Presiding Officer of the House  
of Representatives

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