

1 ENGROSSED HOUSE  
2 BILL NO. 2311

By: Lawson and Munson of the  
House

3 and

4 Haste of the Senate  
5

6 An Act relating to children; amending 10A O.S. 2011,  
7 Sections 2-2-403, 2-3-101, as last amended by Section  
8 1, Chapter 22, O.S.L. 2020, 2-5-204, as amended by  
9 Section 4, Chapter 155, O.S.L. 2018 and 2-5-209, as  
10 amended by Section 9, Chapter 155, O.S.L. 2018 (10A  
11 O.S. Supp. 2020, Sections 2-3-101, 2-5-204 and 2-5-  
12 209), which relate to detention of children in adult  
13 facilities; providing for incarceration of juveniles  
14 sentenced as adults; prohibiting detainment of  
15 children in adult facilities; providing exceptions;  
16 requiring hearing and certain findings before  
17 confinement of child in adult facility; establishing  
18 factors for court to consider; affording certain  
19 rights and protections to child; providing for  
20 detention of youthful offenders; and providing an  
21 effective date.

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

23 SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-2-403, is  
24 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  
which would be a felony if committed by an adult, the court on its  
own motion or at the request of the district attorney shall conduct  
a preliminary hearing to determine whether or not there is  
prosecutive merit to the complaint. If the court finds that

1 prosecutive merit exists, it shall continue the hearing for a  
2 sufficient period of time to conduct an investigation and further  
3 hearing to determine if the child should be held accountable for  
4 acts of the child as if the child were an adult if the child should  
5 be found to have committed the alleged act or omission.

6 Consideration shall be given to:

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

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

14 3. The sophistication and maturity of the juvenile and  
15 capability of the juvenile of distinguishing right from wrong as  
16 determined by consideration of a psychological evaluation of the  
17 juvenile, home, environmental situation, emotional attitude and  
18 pattern of living;

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

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

1           6. The likelihood of reasonable rehabilitation of the juvenile  
2 if the juvenile is found to have committed the alleged offense, by  
3 the use of procedures and facilities currently available to the  
4 juvenile court; and

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

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

20           If not included in the original summons, notice of a hearing to  
21 consider whether a child should be certified for trial as an adult  
22 shall be given to all persons who are required to be served with a  
23 summons at the commencement of a juvenile proceeding, but  
24 publication in a newspaper when the address of a person is unknown

1 is not required. The purpose of the hearing shall be clearly stated  
2 in the notice.

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

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

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

11 SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-3-101, as  
12 last amended by Section 1, Chapter 22, O.S.L. 2020 (10A O.S. Supp.  
13 2020, Section 2-3-101), is amended to read as follows:

14 Section 2-3-101. A. When a child is taken into custody  
15 pursuant to the provisions of the Oklahoma Juvenile Code, the child  
16 shall be detained only if it is necessary to assure the appearance  
17 of the child in court or for the protection of the child or the  
18 public.

19 1. a. No child twelve (12) years of age or younger shall be  
20 placed in a juvenile detention facility unless all  
21 alternatives have been exhausted and the child is  
22 currently charged with a criminal offense that would  
23 constitute a felony if committed by an adult and it  
24 has been indicated by a risk-assessment screening that

1 the child requires detention. The detention of any  
2 child twelve (12) years of age or younger shall be  
3 judicially reviewed pursuant to subparagraph c of this  
4 paragraph.

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

13 c. No preadjudicatory or predisposition detention or  
14 custody order shall remain in force and effect for  
15 more than thirty (30) days. The court, for good and  
16 sufficient cause shown, may extend the effective  
17 period of such an order for an additional period not  
18 to exceed sixty (60) days. If the child is being  
19 detained for the commission of a murder, the court  
20 may, if it is in the best interests of justice, extend  
21 the effective period of such an order an additional  
22 sixty (60) days.

23 d. Whenever the court orders a child to be held in a  
24 juvenile detention facility, an order for secure

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

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

8           3. Except as otherwise authorized by this section a child who  
9 has been taken into custody as a deprived child, a child in need of  
10 supervision, or who appears to be a minor in need of treatment, may  
11 not be placed in any detention facility pending court proceedings,  
12 but must be placed in shelter care or foster care or, with regard to  
13 a child who appears to be a minor in need of treatment, a behavioral  
14 health treatment facility in accordance with the provisions of the  
15 Inpatient Mental Health and Substance Abuse Treatment of Minors Act,  
16 or released to the custody of the parents of the child or some other  
17 responsible party. Provided, this shall not preclude runaway  
18 juveniles from other states, with or without delinquent status, to  
19 be held in a detention facility in accordance with the Interstate  
20 Compact for Juveniles in Sections 2-9-101 through 2-9-116 of this  
21 title and rules promulgated by the Interstate Commission.

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

23           1. The child is an escapee from any delinquent placement;  
24



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

4           3. The child is seriously assaultive or destructive towards  
5 others or self;

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

9           a. is on probation or parole on a prior delinquent  
10 offense,

11           b. is on preadjudicatory community supervision, or

12           c. is currently on release status on a prior delinquent  
13 offense;

14           5. The child has willfully failed or there is reason to believe  
15 that the child will willfully fail to appear for juvenile court  
16 proceedings;

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

18           a. the child is absent from court-ordered placement  
19 without approval by the court,

20           b. the child is absent from designated placement by the  
21 Office of Juvenile Affairs without approval by the  
22 Office of Juvenile Affairs,

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

1           d.    the child is subject to an administrative transfer or  
2                    parole revocation proceeding.

3           C.    A child who has violated a court order and has had the order  
4   revoked or modified pursuant to Section 2-2-503 of this title may be  
5   placed into an Office-of-Juvenile-Affairs-designated sanction  
6   detention bed or an Office-of-Juvenile-Affairs-approved sanction  
7   program.

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

16           E.   Juvenile detention facilities shall be the default placement  
17   for all persons under seventeen (17) years of age. No child shall  
18   be placed in secure detention in an adult jail, adult lockup, adult  
19   detention facility or other adult facility except as provided in  
20   this section.

21           1.   Any child who is at least fifteen (15) years of age who is  
22   charged with murder in the first degree may be detained in an adult  
23   jail, adult lockup, adult detention facility or other adult facility  
24   only after a hearing in which the child is provided representation

1 and a written court order stating that it is in the interest of  
2 justice that the child be placed in an adult jail, adult lockup,  
3 adult detention facility or other adult facility and if that  
4 facility is licensed by the Office of Juvenile Affairs to detain  
5 children under eighteen (18) years of age.

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

- 11 a. the age of the child,
- 12 b. the physical and mental maturity of the child,
- 13 c. the present mental state of the child, including  
14 whether the child presents an imminent risk of harm to  
15 himself or herself,
- 16 d. the nature and circumstances of the alleged offense,
- 17 e. the child's history of prior delinquent acts,
- 18 f. the relative ability of the available adult and  
19 juvenile detention facilities to not only meet the  
20 specific needs of the child but also to protect the  
21 safety of the public as well as other detained youth,  
22 and
- 23 g. any other relevant factors.

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

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

12           b. the child shall not be held in any adult jail or  
13           lockup for adults for more than one hundred eighty  
14           (180) days, unless the court, in writing, determines  
15           there is good cause for an extension or the child  
16           expressly waives this limitation.

17       F. When a child is placed in an adult jail, adult lockup, adult  
18 detention facility or other adult facility, he or she shall be  
19 afforded the following rights and protections in order to address  
20 the child's health and safety:

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

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

5        G. 1. Except as otherwise provided in this section, no child  
6 shall be placed in secure detention in a an adult jail, adult  
7 lockup, ~~or other~~ adult detention facility or other adult facility  
8 unless:

- 9            a. ~~the child is detained for the commission of a crime~~  
10            ~~that would constitute a felony if committed by an~~  
11            ~~adult, and~~
- 12            b. ~~the child is awaiting an initial court appearance, and~~
- 13            c. ~~the initial court appearance of the child is scheduled~~  
14            ~~within twenty-four (24) hours after being taken into~~  
15            ~~custody, excluding weekends and holidays, and~~
- 16            d. ~~the court of jurisdiction is outside of the Standard~~  
17            ~~Metropolitan Statistical Area as defined by the Bureau~~  
18            ~~of Census, and~~
- 19            e. ~~there is no existing acceptable alternative placement~~  
20            ~~for the child, and~~
- 21            ~~f.~~ the adult jail, adult lockup or adult detention  
22            facility provides sight and sound separation for  
23            juveniles, pursuant to standards required by  
24            subsection E of Section 2-3-103 of this title, ~~or~~ and

1           ~~g.~~

2           b.   the adult jail, adult lockup or adult detention  
3           facility meets the requirements for licensure of  
4           juvenile detention facilities, as adopted by the  
5           Office of Juvenile Affairs, is appropriately licensed,  
6           and provides sight and sound separation for juveniles,  
7           which includes:

8           (1)   total separation between juveniles and adult  
9           facility spatial areas such that there could be  
10          no haphazard or accidental contact between  
11          juvenile and adult residents in the respective  
12          facilities,

13          (2)   total separation in all juvenile and adult  
14          program activities within the facilities,  
15          including recreation, education, counseling,  
16          health care, dining, sleeping and general living  
17          activities, and

18          (3)   separate juvenile and adult staff, specifically  
19          direct care staff such as recreation, education  
20          and counseling.

21          Specialized services staff, such as cooks,  
22          bookkeepers, and medical professionals who are not  
23          normally in contact with detainees or whose infrequent  
24

1 contacts occur under conditions of separation of  
2 juveniles and adults can serve both.

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

13 a. The time limitations for holding a child in a jail for  
14 the purposes of identification, processing or  
15 arranging transfer established by this section shall  
16 not include the actual travel time required for  
17 transporting a child from a jail to a juvenile  
18 detention facility or alternative to secure detention.

19 b. Whenever the time limitations established by this  
20 subsection are exceeded, this circumstance shall not  
21 constitute a defense in a subsequent delinquency or  
22 criminal proceeding.

23 3. Nothing in this section shall preclude detaining in a county  
24 jail or other adult detention facility an eighteen-year-old charged

1 in a juvenile petition for whom certification to stand trial as an  
2 adult is prayed. However, if no certification motion is filed, the  
3 eighteen-year-old may remain in a juvenile detention facility as  
4 long as secure detention is required.

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

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

19 a. there is a reasonable belief that the person is  
20 eighteen (18) years of age or older,

21 b. there is a reasonable belief that a felony has been  
22 committed by the person,

23

24



1 c. a court order for such detention is obtained from a  
2 judge of the district court within six (6) hours of  
3 initially detaining the person,

4 d. there is no juvenile detention facility that has space  
5 available for the person and that is within thirty  
6 (30) miles of the jail, police station, or law  
7 enforcement office in which the person is to be  
8 detained, and

9 e. during the time of detention the person is detained in  
10 a facility meeting the requirements of subparagraph ~~g~~  
11 b of paragraph 1 of this subsection.

12 The time limitation provided for in this paragraph shall include the  
13 time the person is detained prior to the issuance of the court  
14 order.

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

21 ~~F.~~ H. Nothing contained in this section shall in any way reduce  
22 or eliminate the liability of a county as otherwise provided by law  
23 for injury or damages resulting from the placement of a child in a  
24

1 an adult jail, adult lockup, ~~or other~~ adult detention facility or  
2 other adult facility.

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

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

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

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

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

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

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

22 D. All youthful offender court records for a person who is  
23 certified to stand trial as an adult or youthful offender shall be  
24 considered adult records and shall not be subject to the provisions

1 of Chapter 6 of the Oklahoma Juvenile Code; provided, however, all  
2 reports, evaluations, motions, records, exhibits or documents  
3 regarding the educational history, mental health or medical  
4 treatment or condition of the offender that are submitted to the  
5 court or admitted into evidence during the hearing on the motion for  
6 certification as a youthful offender to the juvenile system or  
7 motion for imposition of an adult sentence shall be confidential and  
8 shall be filed or admitted under seal, except that such records  
9 shall be provided to the Office of Juvenile Affairs. Any testimony  
10 regarding the reports, evaluations, motions, records, exhibits or  
11 documents shall be given in camera and shall not be open to the  
12 general public; provided, all persons having a direct interest in  
13 the case as provided in paragraph 1 of subsection A of Section 2-2-  
14 402 of this title shall be allowed to be present during the  
15 testimony but shall be admonished not to discuss the testimony  
16 following the hearing. All reports, evaluations, motions, records,  
17 exhibits or documents shall be released from under seal by order of  
18 the court if the youthful offender is sentenced to the custody or  
19 supervision of the Department of Corrections by the court pursuant  
20 to paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of  
21 subsection B of Section 2-5-210 of this title or if the juvenile or  
22 youthful offender is later charged as an adult with a felony crime.

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

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

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

21 H. A child or youthful offender shall be tried as an adult in  
22 all subsequent criminal prosecutions, and shall not be subject to  
23 the jurisdiction of the juvenile court as a juvenile delinquent or  
24 youthful offender processes in any further proceedings if:

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

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

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

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

18 SECTION 4. AMENDATORY 10A O.S. 2011, Section 2-5-209, as  
19 amended by Section 9, Chapter 155, O.S.L. 2018 (10A O.S. Supp. 2020,  
20 Section 2-5-209), is amended to read as follows:

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

24

1 1. A youthful offender presentence investigation shall be  
2 conducted unless waived by the youthful offender with approval of  
3 the court or unless an investigation is conducted pursuant to  
4 subsection C of Section 2-5-208 of this title. All reports,  
5 evaluations, motions, records, exhibits or documents regarding the  
6 educational history, mental health or medical treatment or condition  
7 of the offender that are submitted to the court or admitted into  
8 evidence during the hearing on the motion for certification of the  
9 accused youthful offender to the juvenile system or motion for  
10 imposition of an adult sentence are confidential and shall be filed  
11 or admitted under seal, except that such records shall be provided  
12 to the Office of Juvenile Affairs. Any testimony regarding the  
13 reports, evaluations, motions, records, exhibits or documents shall  
14 be given in camera and shall not be open to the general public;  
15 provided, all persons having a direct interest in the case as  
16 provided in paragraph 1 of subsection A of Section 2-2-402 of this  
17 title shall be allowed to be present during the testimony but shall  
18 be admonished not to discuss the testimony following the hearing.  
19 All reports, evaluations, motions, records, exhibits or documents  
20 shall be released from under seal by order of the court if the  
21 youthful offender is sentenced to the custody or supervision of the  
22 Department of Corrections by the court pursuant to paragraph 1 of  
23 subsection B of ~~Section 2-5-209~~ this section or paragraph 5 of  
24 subsection B of Section 2-5-210 of this title or if the juvenile or

1 youthful offender is later charged as an adult with a felony crime.  
2 Any presentence investigation required by this section shall be  
3 conducted by the Office of Juvenile Affairs; and

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

6 a. whether the offense was committed in an aggressive,  
7 violent, premeditated or willful manner,

8 b. whether the offense was against persons and, if  
9 personal injury resulted, the degree of personal  
10 injury,

11 c. the record and past history of the person, including  
12 previous contacts with law enforcement agencies and  
13 juvenile or criminal courts, prior periods of  
14 probation and commitments to juvenile institutions,

15 d. the sophistication and maturity of the person and the  
16 capability of distinguishing right from wrong as  
17 determined by consideration of the psychological  
18 evaluation, home, environmental situation, emotional  
19 attitude and pattern of living of the person,

20 e. the prospects for adequate protection of the public if  
21 the person is processed through the youthful offender  
22 system or the juvenile system,

23 f. the reasonable likelihood of rehabilitation of the  
24 person if found to have committed the offense, by the



1 use of procedures and facilities currently available  
2 to the juvenile, and

3 g. whether the offense occurred while the person was  
4 escaping or on escape status from an institution for  
5 youthful offenders or delinquent children.

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

21 a. whether the youthful offender shall be returned to the  
22 Office of Juvenile Affairs to complete a treatment  
23 program, provided that the treatment program shall not  
24 exceed the youthful offender's attainment of eighteen

1 (18) years and six (6) months of age. At the  
2 conclusion of the treatment program, the individual  
3 shall be returned to the sentencing court for a  
4 determination under subparagraph b, c or d of this  
5 paragraph,

6 b. whether the youthful offender shall be placed in the  
7 custody of the Department of Corrections,

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

10 d. whether the youthful offender shall be discharged from  
11 custody.

12 2. The sentence imposed shall not exceed the maximum sentence  
13 already imposed in the originating sentence.

14 3. Upon the youthful offender attaining the age of eighteen  
15 (18) years and six (6) months, the Office of Juvenile Affairs may  
16 recommend that the youthful offender be returned to the custody or  
17 supervision of the Office of Juvenile Affairs until the age of  
18 nineteen (19) years to complete the reintegration phase of the  
19 treatment program or community supervision as determined by the  
20 Office of Juvenile Affairs. During any period of extension, a  
21 youthful offender may be transferred to the Department of  
22 Corrections as provided in paragraph 5 of subsection B of Section 2-  
23 5-210 of this title, whether the youthful offender is placed in an  
24 out-of-home placement or in the community.

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

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

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

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

