

1 **SENATE FLOOR VERSION**

2 February 23, 2021

3 SENATE BILL NO. 310

By: Murdock and Montgomery

4
5
6 An Act relating to youthful offenders; amending 10A
7 O.S. 2011, Sections 2-5-205 and 2-5-206, as amended
8 by Sections 5 and 6, Chapter 155, O.S.L. 2018 (10A
9 O.S. Supp. 2020, Sections 2-5-205 and 2-5-206), which
10 relate to certification as youthful offender and acts
11 mandating youthful offender status; prohibiting
12 youthful offender status for person charged with
13 certain crimes; requiring court to consider certain
14 victim statements; conforming language; and providing
15 an effective date.

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

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

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

26 B. Any person fifteen (15), sixteen (16) or seventeen (17)
27 years of age who is charged with murder in the first degree or rape

1 in the first degree or attempt thereof at that time shall be held
2 accountable for his or her act as if the person was an adult and
3 shall not be subject to the provisions of the Youthful Offender Act
4 or the provisions of the Juvenile Code for certification as a
5 juvenile. The person shall have all the statutory rights and
6 protections of an adult accused of a crime. All proceedings shall
7 be as for a criminal action and the provisions of Title 22 of the
8 Oklahoma Statutes shall apply. A person having been convicted as an
9 adult pursuant to this paragraph shall be tried as an adult for
10 every subsequent offense.

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

19 2. The warrant shall be personally served together with a
20 certified copy of the information on the accused person and on a
21 custodial parent, guardian or next friend of the accused person.
22 The court may inquire of the accused as to the whereabouts of his or
23 her parents, guardian, or next friend in order to avoid unnecessary
24 delay in the proceedings.

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

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

23 D. 1. The accused person shall file any motions for
24 certification as a youthful offender or a juvenile before the start

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

1 custody or supervision of the Department of Corrections by the court
2 pursuant to either paragraph 1 of subsection B of Section 2-5-209 or
3 paragraph 5 of subsection B of Section 2-5-210 of this title or if
4 the juvenile or youthful offender is later charged as an adult with
5 a felony crime.

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

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

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

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

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

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

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

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

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

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

16 7. Whether the offense occurred while the accused person was
17 escaping or on escape status from an institution for youthful
18 offenders or delinquent children.

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

24

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

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

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

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

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

- 19 1. Murder in the second degree;
- 20 2. Kidnapping;
- 21 3. Manslaughter in the first degree;
- 22 4. Robbery with a dangerous weapon or a firearm or attempt
23 thereof;
- 24 5. Robbery in the first degree or attempt thereof;

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

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

11 1. Burglary in the first degree or attempted burglary in the
12 first degree;

13 2. Battery or assault and battery on a state employee or
14 contractor while in the custody or supervision of the Office of
15 Juvenile Affairs;

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

17 4. Intimidating a witness;

18 5. Trafficking in or manufacturing illegal drugs;

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

20 7. Maiming;

21 8. Residential burglary in the second degree after two or more
22 adjudications that are separated in time for delinquency for
23 committing burglary in the first degree or residential burglary in
24 the second degree;

1 9. Rape in the second degree; or

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

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

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

14 2. The warrant shall be personally served together with a
15 certified copy of the information on the alleged youthful offender
16 and on a custodial parent, guardian or next friend of the accused
17 person.

18 3. When personal service of a custodial parent, guardian or
19 next friend of the alleged youthful offender cannot be effected,
20 service may be made by certified mail to the last-known address of
21 the person, requesting a return receipt from the addressee only. If
22 delivery is refused, notice may be given by mailing the warrant and
23 a copy of the information on the accused person by regular first-
24 class mail to the address where the person to be notified refused

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

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

16 E. The court shall commence a preliminary hearing within ninety
17 (90) days of the filing of the information pursuant to Section 258
18 of Title 22 of the Oklahoma Statutes, to determine whether the crime
19 was committed and whether there is probable cause to believe the
20 accused person committed the crime. If the preliminary hearing is
21 not commenced within ninety (90) days, the state shall be prohibited
22 from seeking an adult sentence unless the ninety-day requirement is
23 waived by the defendant. If the whereabouts of the accused are
24 unknown at the time of the filing of the information or if the

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

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

21 a. upon the filing of such motion, the complete juvenile
22 record of the accused shall be made available to the
23 district attorney and the accused person,

24

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

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

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

1 exhibits or documents shall be released from under seal by order of
2 the court if the youthful offender is sentenced to the custody or
3 supervision of the Department of Corrections by the court pursuant
4 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 4. The court shall rule on the certification motion before
9 ruling on whether to bind the accused over for trial. When ruling
10 on the certification motion, the court shall give consideration to
11 the following guidelines with the greatest weight given to
12 subparagraphs a, b and c:

13 a. whether the alleged offense was committed in an
14 aggressive, violent, premeditated or willful manner,
15 b. whether the offense was against persons, and if
16 personal injury resulted, the degree of personal
17 injury, and the statements of the victim or victims,

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

23 d. the sophistication and maturity of the accused person
24 and the accused person's capability of distinguishing

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

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

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

13 g. whether the offense occurred while the accused person
14 was escaping or in an escape status from an
15 institution for youthful offenders or juvenile
16 delinquents.

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

22 6. An order certifying a person or denying such certification
23 to the juvenile justice system shall be a final order, appealable
24 when entered.

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

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

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
8 February 23, 2021 - DO PASS
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24