

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 224

By: Griffin of the Senate

and

Kannady of the House

8
9 COMMITTEE SUBSTITUTE

10 An Act relating to juveniles; amending 10A O.S. 2011,
11 Sections 2-2-301, as amended by Section 9, Chapter
12 404, O.S.L. 2013, 2-2-501, as last amended by Section
13 1, Chapter 362, O.S.L. 2014, 2-4-107, as amended by
14 Section 17, Chapter 404, O.S.L. 2013, 2-5-204, 2-5-
15 205, 2-5-206, 2-5-207, 2-5-208 and 2-5-209 (10A O.S.
16 Supp. 2017, Sections 2-2-301, 2-2-501 and 2-4-107)
17 which relate to the Oklahoma Juvenile Code; requiring
18 appointment of an attorney under certain
19 circumstances; applying certain procedural
20 requirements for attorney of child; modifying salary
21 limitations for certain employees; requiring
22 confidentiality of certain records; providing
23 exceptions; requiring testimony in camera about
24 certain records; closing testimony to general public;
allowing specified persons to be present; authorizing
release of certain records under specified
circumstances; modifying time limitations for
preliminary hearing under certain circumstances;
increasing maximum age for certain offender status;
clarifying applicability of certain fee; granting
jurisdiction over certain offenders; specifying
certain orders as appealable; updating language;
repealing 10A O.S. 2011, Section 2-5-101, which
relates to juveniles of certain ages to be considered
adults for certain offenses committed; and providing
an effective date.

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

2 SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-2-301, as
3 amended by Section 9, Chapter 404, O.S.L. 2013 (10A O.S. Supp. 2017,
4 Section 2-2-301), is amended to read as follows:

5 Section 2-2-301. A. No information gained by a custodial
6 interrogation of a youthful offender under sixteen (16) years of age
7 or a child nor any evidence subsequently obtained as a result of
8 such interrogation shall be admissible into evidence against the
9 youthful offender or child unless the custodial interrogation about
10 any alleged offense by any law enforcement officer or investigative
11 agency, or employee of the court, or employee of the Office of
12 Juvenile Affairs is done in the presence of the parents, guardian,
13 attorney, adult relative, adult caretaker, or legal custodian of the
14 youthful offender or child. No such custodial interrogation shall
15 commence until the youthful offender or child and the parents,
16 guardian, attorney, adult relative, adult caretaker, or legal
17 custodian of the youthful offender or child have been fully advised
18 of the constitutional and legal rights of the youthful offender or
19 child, including the right to be represented by counsel at every
20 stage of the proceedings, and the right to have counsel appointed by
21 the court if the parties are without sufficient financial means;
22 provided, however, that no legal aid or other public or charitable
23 legal service shall make claim for compensation as contemplated
24 herein. It is further provided that where private counsel is

1 appointed in such cases, the court shall set reasonable compensation
2 and order the payment out of the court fund. As used in this
3 section, "custodial interrogation" means questioning of a youthful
4 offender under sixteen (16) years of age or child while that
5 youthful offender or child is in law enforcement custody or while
6 that youthful offender or child is being deprived of freedom of
7 action in any significant way by a law enforcement officer, employee
8 of the court, or employee of the Office. Custodial interrogation
9 shall conform with all requirements for interrogation of adult
10 criminal offenders. The term "custodial interrogation" shall not be
11 deemed to mean questioning of a youthful offender or child by a
12 public school administrator or teacher, so long as such questioning
13 is not being conducted on behalf of a law enforcement officer, an
14 employee of the court or an employee of the Office. Any information
15 gained from noncustodial questioning of a child or youthful offender
16 by a public school administrator or teacher concerning a wrongful
17 act committed on public school property shall be admissible into
18 evidence against the youthful offender or child.

19 B. A custodial interrogation of a youthful offender over
20 sixteen (16) years of age shall conform with all the requirements
21 for the interrogation of an adult.

22 C. If the youthful offender or child is not otherwise
23 represented by counsel, whenever a petition is filed pursuant to the
24 provisions of Section 2-2-104 or Section 2-5-201 et seq. of this

1 title, the court shall appoint an attorney, who shall not be a
2 district attorney, for the youthful offender or child regardless of
3 any attempted waiver by the parent or other legal custodian of the
4 youthful offender or child of the right of the youthful offender or
5 child to be represented by counsel. The youthful offender or child
6 shall be represented by counsel at every hearing or review through
7 completion or dismissal of the case. Counsel shall be appointed by
8 the court only upon determination by the court that the parent,
9 legal guardian or legal custodian is found to be indigent. If
10 indigency is established, the Oklahoma Indigent Defense System shall
11 represent the child in accordance with Section 1355.6 of Title 22 of
12 the Oklahoma Statutes or the applicable office of the county
13 indigent defender shall represent the child in accordance with
14 Section 138.5 of Title 19 of the Oklahoma Statutes. Provided, if
15 the parent or legal guardian of a child is not indigent but refuses
16 to employ counsel, the court shall appoint counsel to represent the
17 child at detention hearings until counsel is provided. Costs of
18 representation shall be imposed on the parent or other legal
19 custodian as provided by Section 138.10 of Title 19 of the Oklahoma
20 Statutes. Thereafter, the court shall not appoint counsel for a
21 child with a nonindigent parent or legal custodian and shall order
22 the parent or legal custodian to obtain counsel. A parent or legal
23 custodian of an indigent child who has been ordered to obtain
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1 counsel for the child and who willfully fails to follow the court
2 order shall be found in indirect contempt of court.

3 D. In all cases of juvenile delinquency, adult certification,
4 reverse certification, or youthful offender proceedings and appeals,
5 or any other proceedings and appeals pursuant to the Oklahoma
6 Juvenile Code, except mental health or in-need-of-supervision
7 proceedings and appeals, and any other juvenile proceedings that are
8 civil in nature, and other than in counties where the office of the
9 county indigent defender is appointed, the Oklahoma Indigent Defense
10 System shall be appointed to represent indigent juveniles as
11 provided for in the Indigent Defense Act. In all other cases
12 pursuant to this title, including juvenile proceedings that are
13 civil in nature, juvenile mental health or in-need-of-supervision
14 proceedings and appeals, with the exception of proceedings in
15 counties where the office of the county indigent defender is
16 appointed, the court shall, if counsel is appointed and assigned,
17 allow and direct to be paid from the local court fund a reasonable
18 and just compensation to the attorney or attorneys for such services
19 as they may render; provided, that any attorney appointed pursuant
20 to this subsection shall not be paid a sum in excess of One Hundred
21 Dollars (\$100.00) for services rendered in preliminary proceedings,
22 Five Hundred Dollars (\$500.00) for services rendered during trial,
23 and One Hundred Dollars (\$100.00) for services rendered at each
24 subsequent post-disposition hearing.

1 E. Counsel for the child shall advise the child and advocate
2 the expressed wishes of the child, as much as reasonably possible,
3 under the same ethical obligations as if the client were an adult.
4 Upon motion by the state, the child, the attorney for the child, or
5 a parent or legal custodian of the child, the court shall appoint a
6 guardian ad litem.

7 F. The guardian ad litem shall not be a district attorney, an
8 employee of the office of the district attorney, an employee of the
9 court, an employee of a juvenile bureau, or an employee of any
10 public agency having duties or responsibilities towards the child.
11 The guardian ad litem shall be given access to the court file and
12 access to all records and reports relevant to the case and to any
13 records and reports of examination of the child's parent or other
14 custodian, made pursuant to this section or Section 1-2-101 of this
15 title. Provided, nothing in this subsection shall obligate counsel
16 for the child to breach attorney-client confidentiality with the
17 child.

18 SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-2-501, as
19 last amended by Section 1, Chapter 362, O.S.L. 2014 (10A O.S. Supp.
20 2017, Section 2-2-501), is amended to read as follows:

21 Section 2-2-501. A. No later than forty (40) days after making
22 an order of adjudication, the court shall hold a dispositional
23 hearing, at which all evidence helpful in determining the proper
24 disposition best serving the interest of the child and the public,

1 including but not limited to oral and written reports, may be
2 admitted and may be relied upon to the extent of its probative
3 value, even though not competent for the purposes of the
4 adjudicatory hearing.

5 B. Before making an order of disposition, the court shall
6 advise the district attorney, the attorney of the child, the
7 parents, guardian, custodian or responsible relative, and their
8 counsel, of the factual contents and the conclusion of reports
9 prepared for the use of the court and considered by it, and afford
10 fair opportunity, if requested, to controvert them. An order of
11 disposition shall include a specific finding and order of the court
12 relative to the liability and accountability of the parents for the
13 care and maintenance of the child as authorized by Section 2-2-703
14 of this title, unless custody is placed with the parent or parents
15 of the child.

16 C. On its own motion or that of the district attorney, the
17 attorney of the child or of the parent, guardian, custodian,
18 responsible relative or counsel, the court may adjourn the hearing
19 for a reasonable period to receive reports or other evidence and, in
20 such event, shall make an appropriate order for detention of the
21 child, or release of the child from detention subject to supervision
22 by the court, during the period of the continuance.

23 D. In scheduling investigations and hearings, the court shall
24 give priority to proceedings in which a child is in detention, or

1 has otherwise been removed from his home, before an order of
2 disposition has been made.

3 SECTION 3. AMENDATORY 10A O.S. 2011, Section 2-4-107, as
4 amended by Section 17, Chapter 404, O.S.L. 2013 (10A O.S. Supp.
5 2017, Section 2-4-107), is amended to read as follows:

6 Section 2-4-107. A. 1. The salary of the director and other
7 employees of the bureau and any detention home established pursuant
8 to Section 2-4-108 of this title shall be fixed by the judge of the
9 Juvenile Division, subject to the general administrative authority
10 of the county commissioners of the contracting county. The salary
11 of the director shall not exceed ninety percent (90%) of salaries of
12 county Class A officers.

13 2. The salary of ~~supervisors with intake or probation duties~~
14 any other employee of the juvenile bureau shall not exceed eighty-
15 five percent (85%) of Class A county officers.

16 ~~3. The salary of employees with case, probation, counseling or~~
17 ~~juvenile duties shall not exceed eighty percent (80%) of Class A~~
18 ~~county officers.~~

19 B. The judge of the Juvenile Division, subject to the general
20 administrative authority of the county commissioners of the
21 contracting county, may fix a limit on the amount of expenses that
22 may be incurred by the director and assistants to the director, such
23 limit to be in the judgment of the judge adequate to care for the
24 expenses necessary to carrying out the orders of the court in an

1 efficient and expedient manner. The director and assistants to the
2 director and other personnel of the court shall keep and maintain
3 their offices at the place where the office of the judge of the
4 court is kept, unless the judge of the Juvenile Division, subject to
5 the general administrative authority of the county commissioners of
6 the contracting county, shall direct otherwise. The offices of the
7 director and assistants to the director shall contain adequate
8 equipment, desk space and consultation rooms necessary for
9 appropriate office procedure.

10 C. In addition to their salaries, the director and assistants
11 to the director shall be reimbursed at the same rate as state
12 employees for mileage traveled by them in the investigation of court
13 cases and in supervising probationers. The director and assistants
14 may also receive reimbursement, at the rate and in the manner
15 applicable to other county officers, for actual and necessary
16 expenses incurred by them in attending conferences, meetings,
17 seminars or official business of the court either within or outside
18 of the State of Oklahoma.

19 D. In all counties having a juvenile bureau, the budget of the
20 juvenile bureau for salaries and expenses of the director,
21 counselors and other employees shall be established and funded as
22 follows:
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1 1. All expenses incurred in complying with the provisions of
2 this article shall be a county charge or funded by a special sales
3 tax dedicated to juvenile programs and expenses;

4 2. The salaries and other compensation of all employees of the
5 juvenile bureau shall be fixed by the judge within the limit of the
6 total appropriations therefor; and

7 3. It is made the duty of the county excise board to make the
8 necessary appropriation and levy for the payment of salaries of the
9 director and all other employees, together with the expenses of
10 administering the bureau, consistent with the duty to do likewise
11 with the budget estimates of other county officers under the board's
12 jurisdiction, as required by the Constitution and laws of this
13 state.

14 4. Except in instances where it is entitled to representation
15 because of insurance coverage, the district attorney of the county
16 in which the juvenile bureau is located shall represent the juvenile
17 bureau and any employee who was acting in his or her official
18 capacity at the time of the act or omission complained of in any
19 lawsuit. If the district attorney has a conflict of interest or
20 otherwise declines to represent the juvenile bureau or its
21 employees, the county commissioners may request the assistance of
22 the Attorney General or authorize the employment of private counsel
23 for the juvenile bureau and its employees in their official
24 capacity.

1 SECTION 4. AMENDATORY 10A O.S. 2011, Section 2-5-204, is
2 amended to read as follows:

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

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

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

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1 D. All youthful offender court records for ~~such~~ 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
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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 ~~D.~~ E. Proceedings against a youthful offender shall be heard by
4 any judge of the district court.

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

21 ~~G.~~ H. A child or youthful offender shall be tried as an adult
22 in 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 ~~H.~~ I. Except as otherwise provided in the Youthful Offender
11 Act, a 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 5. AMENDATORY 10A O.S. 2011, Section 2-5-205, is
19 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

1 to the provisions of subsection G H of Section 2-5-204 of this
2 title.

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

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

22 2. The warrant shall be personally served together with a
23 certified copy of the information on the accused person and on a
24 custodial parent, guardian or next friend of the accused person.

1 The court may inquire of the accused as to the whereabouts of his or
2 her parents, guardian, or next friend in order to avoid unnecessary
3 delay in the proceedings.

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

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

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

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

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

1 preliminary hearing commenced within ninety (90) days of the filing
2 of the information. An accused who fails to cooperate with
3 providing information in locating the parents of the accused,
4 guardian, or next friend for purpose of notice waives the right to
5 have the preliminary hearing commence within ninety (90) days of the
6 filing of the information. If the preliminary hearing did not
7 commence within ninety (90) days from the filing of the information
8 due to the absence or inability to locate the accused, the
9 preliminary hearing shall commence within ninety (90) days after the
10 state has actual notice of the in-state location of the accused. If
11 the 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.

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

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

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

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

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

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

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

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

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

23 The court, in its decision on a motion for certification as a
24 youthful offender or juvenile, shall detail findings of fact and

1 conclusions of law to each of the above considerations, and shall
2 state that the court has considered each of the guidelines in
3 reaching its decision.

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

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

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

17 SECTION 6. AMENDATORY 10A O.S. 2011, Section 2-5-206, is
18 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. Forcible sodomy;
- 7 9. Lewd molestation;
- 8 10. Arson in the first degree or attempt thereof; or
- 9 11. Any offense in violation of Section 652 of Title 21 of the
10 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,
- 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 ~~4.~~ 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
24

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

3 ~~5.~~ 6. An order certifying a person or denying such
4 certification to the juvenile justice system shall be a final order,
5 appealable 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 7. AMENDATORY 10A O.S. 2011, Section 2-5-207, is
12 amended to read as follows:

13 Section 2-5-207. It is the intent of the Legislature to fully
14 utilize the Youthful Offender Act as a means to protect the public
15 while rehabilitating and holding youth accountable for serious
16 crimes. The Legislature finds that eligible seventeen-year-olds
17 should have the opportunity to be processed as youthful offenders as
18 provided by law and held accountable through the various provisions
19 of the Youthful Offender Act for custody, institutional placement,
20 supervision, extended jurisdiction within the Office of Juvenile
21 Affairs, and the ability to transfer youthful offenders to the
22 Department of Corrections when incarceration or additional
23 supervision is required beyond the maximum age allowed in the Office
24 of Juvenile Affairs. No older youth should be deemed ineligible or

1 denied consideration as a youthful offender who is otherwise
2 lawfully eligible based upon the age of the youth being seventeen
3 (17) years, but it is the intent of the Legislature that such
4 youthful offender shall not remain in the custody or under the
5 supervision of the Office of Juvenile Affairs beyond the youthful
6 offender's maximum age of eighteen (18) years and ~~five (5)~~ six (6)
7 months or until nineteen (19) years of age if jurisdiction has been
8 extended as provided in subsection B of Section 2-5-209 of this
9 title. To deny access to an otherwise eligible older youth without
10 cause is to circumvent the original intent of the Legislature in
11 creating the Youthful Offender Act.

12 SECTION 8. AMENDATORY 10A O.S. 2011, Section 2-5-208, is
13 amended to read as follows:

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

22 1. Not more than thirty (30) days following formal arraignment
23 and such motion will be ruled upon by the trial court; or the
24 district attorney may file the motion to impose adult sentence

1 fourteen (14) days prior to the start of the preliminary hearing and
2 the preliminary hearing magistrate will rule on that motion. The
3 district attorney must elect when to file the motion for adult
4 sentence and if the motion is filed and argued to the magistrate, it
5 cannot again be filed and argued to the trial court after
6 arraignment; or

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

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

15 C. 1. The court shall order an investigation to be conducted
16 unless waived by the accused person with approval of the court. Any
17 such investigation required shall be conducted by the Office of
18 Juvenile Affairs. All reports, evaluations, motions, records,
19 exhibits or documents regarding the educational history, mental
20 health or medical treatment or condition of the offender that are
21 submitted to the court or admitted into evidence during the hearing
22 on the motion for certification as a youthful offender to the
23 juvenile system or the motion for imposition of an adult sentence
24 are confidential and shall be filed or admitted under seal, except

1 that such records shall be provided to the Office of Juvenile
2 Affairs. Any testimony regarding the reports, evaluations, motions,
3 records, exhibits or documents shall be given in camera and shall
4 not be open to the general public; provided, all persons having a
5 direct interest in the case as provided in paragraph 1 of subsection
6 A of Section 2-2-402 of this title shall be allowed to be present
7 during the testimony but shall be admonished not to discuss the
8 testimony following the hearing. All reports, evaluations, motions,
9 records, exhibits or documents shall be released from under seal by
10 order of the court if the youthful offender is sentenced to the
11 custody or supervision of the Department of Corrections by the court
12 pursuant to either paragraph 1 of subsection B of Section 2-5-209 or
13 paragraph 5 of subsection B of Section 2-5-210 of this title or if
14 the juvenile or youthful offender is later charged as an adult with
15 a felony crime.

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

- 18 a. whether the offense was committed in an aggressive,
19 violent, premeditated or willful manner,
20 b. whether the offense was against persons and, if
21 personal injury resulted, the degree of injury,
22 c. the record and past history of the accused person,
23 including previous contacts with law enforcement
24 agencies and juvenile or criminal courts, prior

1 periods of probation and commitments to juvenile
2 institutions,

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

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

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

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

19 D. After the hearing and consideration of the report of the
20 investigation, the court shall certify the person as eligible for
21 the imposition of an adult sentence only if it finds by clear and
22 convincing evidence that there is good cause to believe that the
23 accused person would not reasonably complete a plan of
24

1 rehabilitation or that the public would not be adequately protected
2 if the person were to be sentenced as a youthful offender.

3 In its decision on the motion of the state for imposition of an
4 adult sentence, the court shall detail findings of fact and
5 conclusions of law to each of the considerations in subsection C of
6 this section and shall state that the court has considered each of
7 its guidelines in reaching its decision.

8 E. An order certifying or denying certification for imposition
9 of an adult sentence shall be a final order, appealable when
10 entered.

11 F. If the person has been certified as eligible to be sentenced
12 as an adult, the court shall, upon a verdict of guilty or the entry
13 of a plea of guilty or nolo contendere, impose sentence as provided
14 by law for an adult for punishment of the offense committed, subject
15 to the power and authority of the court to suspend or delay
16 sentence, defer judgment, or otherwise structure, limit, or modify
17 sentence as provided in Title 22 of the Oklahoma Statutes or the
18 Youthful Offender Act. When sentence is imposed pursuant to this
19 subsection, the person shall be treated as an adult for purposes of
20 supervision, incarceration and in all subsequent criminal
21 proceedings.

22 G. Upon a verdict of guilty or a plea of guilty or nolo
23 contendere, the court may order the person to pay a fee to the
24 Office of Juvenile Affairs of not less than Twenty-five Dollars

1 (\$25.00), nor more than Five Hundred Dollars (\$500.00), for the
2 presentence or certification investigation. In hardship cases, the
3 court may waive the fee or set the amount of the fee and establish a
4 payment schedule.

5 SECTION 9. AMENDATORY 10A O.S. 2011, Section 2-5-209, is
6 amended to read as follows:

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

10 1. A youthful offender presentence investigation shall be
11 conducted unless waived by the youthful offender with approval of
12 the court or unless an investigation is conducted pursuant to
13 subsection C of Section 2-5-208 of this title. All reports,
14 evaluations, motions, records, exhibits or documents regarding the
15 educational history, mental health or medical treatment or condition
16 of the offender that are submitted to the court or admitted into
17 evidence during the hearing on the motion for certification of the
18 accused youthful offender to the juvenile system or motion for
19 imposition of an adult sentence are confidential and shall be filed
20 or admitted under seal, except that such records shall be provided
21 to the Office of Juvenile Affairs. Any testimony regarding the
22 reports, evaluations, motions, records, exhibits or documents shall
23 be given in camera and shall not be open to the general public;
24 provided, all persons having a direct interest in the case as

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

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

- 15 a. whether the offense was committed in an aggressive,
16 violent, premeditated or willful manner,
17 b. whether the offense was against persons and, if
18 personal injury resulted, the degree of personal
19 injury,
20 c. the record and past history of the person, including
21 previous contacts with law enforcement agencies and
22 juvenile or criminal courts, prior periods of
23 probation and commitments to juvenile institutions,
24

- 1 d. the sophistication and maturity of the person and the
2 capability of distinguishing right from wrong as
3 determined by consideration of the psychological
4 evaluation, home, environmental situation, emotional
5 attitude and pattern of living of the person,
6 e. the prospects for adequate protection of the public if
7 the person is processed through the youthful offender
8 system or the juvenile system,
9 f. the reasonable likelihood of rehabilitation of the
10 person if found to have committed the offense, by the
11 use of procedures and facilities currently available
12 to the juvenile, and
13 g. whether the offense occurred while the person was
14 escaping or on escape status from an institution for
15 youthful offenders or delinquent children.

16 B. 1. After the hearing and consideration of the report of the
17 presentence investigation, the court shall impose sentence as a
18 youthful offender, and such youthful offender shall be subject to
19 the same type of sentencing procedures and duration of sentence,
20 except for capital offenses, including suspension or deferment, as
21 an adult convicted of a felony offense, except that any sentence
22 imposed upon the youthful offender shall be served in the custody or
23 under the supervision of the Office of Juvenile Affairs until the
24 expiration of the sentence, the youthful offender is discharged, or

1 the youthful offender reaches eighteen (18) years of age, whichever
2 first occurs. If an individual sentenced as a youthful offender
3 attains eighteen (18) years of age prior to the expiration of the
4 sentence, such individual shall be returned to the sentencing court.
5 At that time, the sentencing court shall make one of the following
6 determinations:

7 a. whether the youthful offender shall be returned to the
8 Office of Juvenile Affairs to complete a treatment
9 program, provided that the treatment program shall not
10 exceed the youthful offender's attainment of eighteen
11 (18) years ~~of age~~ and ~~five (5)~~ six (6) months of age.

12 At the conclusion of the treatment program, the
13 individual shall be returned to the sentencing court
14 for a determination under subparagraph b, c or d of
15 this paragraph,

16 b. whether the youthful offender shall be placed in the
17 custody of the Department of Corrections,

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

20 d. whether the youthful offender shall be discharged from
21 custody.

22 2. The sentence imposed shall not exceed the maximum sentence
23 already imposed in the originating sentence.

24

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

12 4. ~~If a~~ the court has extended jurisdiction of the youthful
13 ~~offender has attained eighteen (18) years of age but less than~~
14 ~~eighteen (18) years of age and five (5) months prior to sentencing,~~
15 ~~that individual shall be returned to the sentencing court upon~~
16 ~~attaining the age of eighteen (18) years and five (5) months if that~~
17 ~~individual has been sentenced to a period of placement or treatment~~
18 ~~with the Office of Juvenile Affairs~~ until nineteen (19) years of
19 age, the youthful offender shall remain in custody or under the
20 supervision of the Office of Juvenile Affairs until the youthful
21 offender has been discharged or sentenced by the court or until the
22 youthful offender's nineteenth birthday, at which time the youthful
23 offender shall be returned to the court for final disposition of the
24 youthful offender's case. The court shall have the same

1 dispositional options as provided in subparagraphs b, c and d of
2 paragraph 1 of this subsection.

3 ~~4.~~ 5. Any period of probation required by the sentencing court
4 to be served shall be supervised by:

5 a. the Office of Juvenile Affairs or designated
6 representative, if the youthful offender is under
7 eighteen (18) years of age, or

8 b. the Department of Corrections or designated
9 representative, upon the youthful offender attaining
10 eighteen (18) years of age.

11 ~~5.~~ 6. In addition to or in lieu of the placement of the
12 youthful offender in the custody of or under the supervision of the
13 Office of Juvenile Affairs, the court may issue orders with regard
14 to the youthful offender as provided by law for the disposition of
15 an adjudicated juvenile delinquent as long as the age of the
16 youthful offender does not exceed ~~eighteen (18)~~ nineteen (19) years
17 ~~and five (5) months.~~

18 ~~6.~~ 7. It is the intent of the Oklahoma Legislature that
19 youthful offenders be held insofar as is practical separate from the
20 juvenile delinquent population.

21 ~~7.~~ 8. The Office of Juvenile Affairs may make recommendations
22 to the court concerning the disposition of the youthful offender.

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

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

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

11 SECTION 11. This act shall become effective November 1, 2018.

12

13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/16/2018 - DO
14 PASS, As Amended.

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