

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2740

By: Peters

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5
6 AS INTRODUCED

7 An Act relating to the children and juvenile code;
8 amending 10A O.S. 2011, Sections 2-5-201, 2-5-202, 2-
9 5-203, 2-5-204, 2-5-205, 2-5-206, 2-5-207, 2-5-208,
10 2-5-209, 2-5-210, 2-5-211, 2-5-212 and 2-5-213, which
11 relate to the Youthful Offender Act; changing name of
12 Youthful Offender Act to Serious Juvenile Offender
13 Act; designating youthful offenders as serious
14 juvenile offenders; providing legislative intent and
15 purpose for the Serious Juvenile Offender Act;
16 modifying and adding definitions; deleting purpose
17 statement for the Youthful Offender Act; clarifying
18 criminal proceeding procedures; prohibiting the
19 admissibility of custodial interrogation information
20 under certain circumstances; prohibiting commencement
21 of custodial interrogation until offender advised of
22 certain rights; providing for the representation of
23 indigent offenders; providing for the confidentiality
24 of court records and files; clarifying certification
procedures; providing time limitation for commencing
trial unless waived by the accused; establishing
burden of proof for juvenile certification;
authorizing continuances for additional
investigations and hearings for certain convicted
persons; authorizing court to order certification
evaluations; increasing age limitation for treatment
programs and sentencing determinations; increasing
time limitation for filing individualized treatment
plans; providing procedures for dispositional
hearings; stating requirements for individualized
treatment plans; allowing court to conduct review
hearings to examine individualized treatment plans;
authorizing transfer of offender to the Department of
Corrections under certain circumstances; amending 10A
O.S. 2011, Section 2-5-301, which relates to
educational needs of confined juveniles; including

1 technology centers and local school districts as
2 educational providers; clarifying status of juveniles
3 who are committed to mental health facilities;
4 authorizing mental health facilities to segregate
5 persons under certain circumstances; prohibiting the
6 disqualification of insurance program eligibility;
7 providing for secure or community-based placement of
8 juveniles; repealing 10A O.S. 2011, Section 2-5-101,
9 which relates to the certification of juveniles
10 charged with certain offenses; providing for
11 codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-5-201, is
amended to read as follows:

Section 2-5-201. A. Sections 2-5-201 through 2-5-213 of this
title shall be known and may be cited as the "~~Youthful~~ Serious
Juvenile Offender Act". The ~~Youthful~~ Serious Juvenile Offender Act
shall be implemented beginning January 1, ~~1998~~ 2013.

B. The Legislature recognizes that juveniles who commit certain
serious offenses need a greater level of security and treatment to
improve the likelihood of success in rehabilitation and
reintegration into society. It is the intent of the Legislature to
provide a sentencing alternative for courts and, where appropriate,
a treatment alternative in dealing with such offenders. It is the
purpose of the Serious Juvenile Offender Act to:

1. Provide a judicial framework for prosecuting a juvenile as a
serious juvenile offender and properly disposing of such cases,

1 including establishing time limitations for prosecution and
2 disposition and ensuring an expedited decision by the court on how
3 the juvenile will be prosecuted;

4 2. Provide that the decision of the court shall be based on the
5 risks and needs assessment of the juvenile, amenability to
6 rehabilitation including a review of the complete social,
7 educational, and certification evaluations of the juvenile as well
8 as the nature of the current charge or charges and past contacts
9 with law enforcement, the juvenile courts, juvenile probation, and
10 any commitments to juvenile institutions;

11 3. Allow the court discretion to continue reviewing the
12 progress of the juvenile in treatment and modify the disposition and
13 individualized treatment plan ordered by the court to ensure the
14 rehabilitation of the juvenile;

15 4. Cognitively and behaviorally redirect the juvenile through
16 the delivery of enhanced and individualized educational, vocational,
17 life, socialization, and independent living skills training,
18 counseling and public service opportunities whenever possible with
19 the goal of equipping the juvenile to effectively participate in
20 society and prepare for a gradual reintegration into the community;

21 5. Segregate by sight and sound the placement of the juvenile
22 with adults prior to bridging;

1 6. Require individual assessments for the juvenile and
2 individualized treatment plans based upon those assessments rather
3 than being based solely on the nature of the offense;

4 7. Develop individualized and effective treatment programs in
5 the community in order to provide rehabilitation for juveniles
6 adjudicated as serious juvenile offenders;

7 8. Develop an individualized reintegration plan and program for
8 every serious juvenile offender who is released back to the
9 community after placement in a secure facility with an
10 individualized plan and program involving ongoing monitoring,
11 treatment and support;

12 9. Authorize the Office of Juvenile Affairs to supervise the
13 juvenile while on parole and impose sanctions to ensure compliance;

14 10. Authorize the court to require the Office of Juvenile
15 Affairs to evaluate and implement as part of the treatment plan of
16 the serious juvenile offender, if necessary, a treatment plan for
17 the parents or custodian of the juvenile to ensure a safe and
18 healthy environment to which the juvenile can return;

19 11. When appropriate, require the juvenile to make restitution
20 to the victim of the offense;

21 12. Provide a means by which a juvenile, who has been sentenced
22 as a serious juvenile offender, may be bridged into the custody or
23 supervision of the Department of Corrections, if necessary; and

1 13. Provide a means by which the records of the serious
2 juvenile offender may be expunged.

3 C. It is the intent of the Legislature that all serious
4 juvenile offenders have access to services provided under the
5 Serious Juvenile Offender Act for a period of time necessary to
6 complete an individualized treatment plan or until the serious
7 juvenile offender reaches the maximum age of twenty-one (21) years,
8 regardless of the age of the serious juvenile offender at the time
9 of sentencing. To deny access to an otherwise eligible older youth
10 without cause is to circumvent the original intent of the
11 Legislature in creating the Serious Juvenile Offender Act.

12 SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-5-202, is
13 amended to read as follows:

14 Section 2-5-202. ~~A.~~ For the purposes of the ~~Youthful~~ Serious
15 Juvenile Offender Act:

16 1. "~~Youthful~~ Serious juvenile offender" means a person:

- 17 a. thirteen (13) or fourteen (14) years of age who is
18 charged with murder in the first degree and certified
19 as a ~~youthful~~ serious juvenile offender as provided by
20 Section 2-5-205 of this title,
- 21 b. fifteen (15), sixteen (16), or seventeen (17) years of
22 age and charged with a crime listed in subsection A of
23 Section 2-5-206 of this title, and

1 c. sixteen (16) or seventeen (17) years of age and
2 charged with a crime listed in subsection B of Section
3 2-5-206 of this title,
4 if the offense was committed on or after January 1, 1998;

5 2. "Sentenced as a ~~youthful~~ serious juvenile offender" means
6 the imposition of a court order making disposition of a ~~youthful~~
7 serious juvenile offender as provided by Section 2-5-209 of this
8 title which shall constitute an adult criminal sentence if the
9 ~~youthful~~ serious juvenile offender is transferred to the custody or
10 supervision of the Department of Corrections; ~~and~~

11 3. "Next friend" means an individual or executive of an
12 organization who has assumed a parental role without formal legal
13 proceedings, but to all objective observers is readily identified as
14 custodian or guardian in fact;

15 4. "Certification evaluation" means an assessment of the
16 educational, academic, behavioral, emotional, psychological, family
17 and social aspects of the serious juvenile offender for the purpose
18 of making treatment recommendations which shall be conducted by a
19 qualified licensed mental health professional as evidenced by
20 documented training and experience in the administration, scoring
21 and interpretation of a broad spectrum of recognized psychometric
22 assessments;

23 5. "Individualized treatment plan" means the written
24 comprehensive plan, based on a risk and needs assessment that

1 outlines and defines the course of treatment for a serious juvenile
2 offender. The individualized treatment plan delineates the goals,
3 objectives, resources, services, and participants in the treatment
4 process. Goals indicated in the treatment plan not only address
5 correction of the criminal behavior that resulted in the serious
6 juvenile offender conviction, but also focus on other components in
7 the life of the serious juvenile offender that may negatively
8 influence the outcome. The individualized treatment plan considers
9 the history of the serious juvenile offender, family relationships,
10 substance abuse and dependence issues, and mental health issues of
11 the serious juvenile offender and the community resources available.
12 Priority is given to goals that address criminogenic needs, which
13 include the offending behavior pattern, peer relationships, criminal
14 thinking and attitudes, and personality factors. The individualized
15 treatment plan includes individualized educational, vocational,
16 socialization, and independent living and life skills that will be
17 acquired by the serious juvenile offender and the services that will
18 assist in achieving the goals set forth in the plan. The
19 individualized treatment plan should be revised periodically as the
20 serious juvenile offender completes treatment and additional needs
21 and resources are identified to be included in the plan or a change
22 of placement occurs;

23 6. "Custodial interrogation" means questioning of a serious
24 juvenile offender under eighteen (18) years of age while that

1 serious juvenile offender is in law enforcement custody or while
2 that serious juvenile offender is being deprived of freedom of
3 action in any significant way by a law enforcement officer, employee
4 of the court, or employee of the Office of Juvenile Affairs.

5 Custodial interrogation shall conform to all requirements for the
6 interrogation of adult criminal offenders. The term "custodial
7 interrogation" shall not be deemed to mean questioning of a serious
8 juvenile offender by a public school administrator or teacher, so
9 long as such questioning is not being conducted on behalf of a law
10 enforcement officer, an employee of the court or an employee of the
11 Office of Juvenile Affairs. Any information gained from
12 noncustodial questioning of a child or serious juvenile offender by
13 a public school administrator or teacher concerning a wrongful act
14 committed on public school property shall be admissible into
15 evidence against the serious juvenile offender;

16 7. "Motion for certification as a juvenile" means a motion
17 filed by an accused asking the court to transfer the case of the
18 accused to the Juvenile Division of the District Court where the
19 case will proceed as a delinquent matter;

20 8. "Motion for certification as a serious juvenile offender"
21 means a motion filed by the accused requesting that the accused be
22 prosecuted as a serious juvenile offender rather than as an adult;

23 9. "Motion for imposition of an adult sentence" means a motion
24 filed by the state pursuant to the guidelines set forth in Section

1 2-5-207 of this title asking the court to allow the accused to be
2 prosecuted and sentenced as if the accused were an adult at the time
3 of the alleged offense;

4 10. "Motion to transfer the serious juvenile offender to the
5 Department of Corrections" or "motion to bridge" means a motion of
6 the state asking the court to remove a serious juvenile offender
7 from the custody or supervision of the Office of Juvenile Affairs
8 and sentencing the serious juvenile offender as an adult pursuant to
9 the criteria set forth in subsection B of Section 2-5-209 of this
10 title; and

11 11. "Risk and needs assessment" means an offense-specific
12 evaluation of the treatment needs of an accused which shall include,
13 but not be limited to, the history of delinquent adjudications of
14 the accused, social information, education, employment, substance
15 abuse and mental health issues, as applicable. The evaluation shall
16 also include a violence risk assessment.

17 ~~B. It is the purpose of the Youthful Offender Act to better~~
18 ~~ensure the public safety by holding youths accountable for the~~
19 ~~commission of serious crimes, while affording courts methods of~~
20 ~~rehabilitation for those youths the courts determine, at their~~
21 ~~discretion, may be amenable to such methods. It is the further~~
22 ~~purpose of the Youthful Offender Act to allow those youthful~~
23 ~~offenders whom the courts find to be amenable to rehabilitation by~~
24 ~~the methods prescribed in the Youthful Offender Act to be placed in~~

1 ~~the custody or under the supervision of the Office of Juvenile~~
2 ~~Affairs for the purpose of accessing the rehabilitative programs~~
3 ~~provided by that Office.~~

4 SECTION 3. AMENDATORY 10A O.S. 2011, Section 2-5-203, is
5 amended to read as follows:

6 Section 2-5-203. A. 1. A child who is charged with having
7 violated any state statute or municipal ordinance other than as
8 provided in Sections 2-5-205 and 2-5-206 of this title shall not be
9 tried in a criminal action as an adult or a ~~youthful~~ serious
10 juvenile offender, but in a juvenile proceeding, unless certified as
11 an adult pursuant to Section 2-2-403 of this title.

12 2. However, when multiple offenses occur within the same course
13 of conduct within the same county and the person is prosecuted for
14 at least one offense as a ~~youthful~~ serious juvenile offender
15 pursuant to Section 2-5-205 or 2-5-206 of this title, then all the
16 charges may be prosecuted under the same action pursuant to the
17 provisions of the ~~Youthful~~ Serious Juvenile Offender Act, if so
18 ordered by the court. The decision to join the cases shall not be
19 appealable as a final order. If the offense listed in Section 2-5-
20 205 or Section 2-5-206 of this title is subsequently dismissed for
21 any reason, then any remaining pending charges shall be transferred
22 to the juvenile court.

23 B. If, during the pendency of a criminal or quasi-criminal
24 charge against any person, it shall be ascertained that the person

1 was a child at the time of committing the alleged offense, the
2 district court or municipal court shall transfer the case, together
3 with all the papers, documents and testimony connected therewith, to
4 the juvenile division of the district court. The division making
5 such transfer shall order the child to be taken forthwith to the
6 place of detention designated by the juvenile division, to that
7 division itself, or release such child to the custody of some
8 suitable person to be brought before the juvenile division.

9 C. Nothing in this section shall be construed to prevent the
10 exercise of concurrent jurisdiction by another division of the
11 district court or by municipal courts in cases involving children
12 wherein the child is charged with the violation of a state or
13 municipal traffic law or ordinance.

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

16 Section 2-5-204. A. A child who is arrested for an offense
17 pursuant to subsection A or B of Section 2-5-206 of this title, or
18 who is certified as a ~~youthful~~ serious juvenile offender pursuant to
19 Section 2-5-205 of this title, shall be charged by information in
20 the same manner as provided for adults, unless the district attorney
21 files a petition alleging the child is a juvenile delinquent.

22 B. No information gained by a custodial interrogation of a
23 serious juvenile offender under eighteen (18) years of age nor any
24 evidence subsequently obtained as a result of such interrogation

1 shall be admissible into evidence against the serious juvenile
2 offender unless the custodial interrogation about any alleged
3 offense by any law enforcement officer, officer of an investigative
4 agency, employee of the court, or employee of the Office of Juvenile
5 Affairs is done in the presence of the parents, guardian, attorney,
6 adult relative, adult caretaker, or legal custodian of the serious
7 juvenile offender. No such custodial interrogation shall commence
8 until the serious juvenile offender and the parents, guardian,
9 attorney, adult relative, adult caretaker, or legal custodian of the
10 serious juvenile offender have been fully advised of the
11 constitutional and legal rights of the serious juvenile offender,
12 including the right to be represented by counsel at every stage of
13 the proceedings and the right to have counsel appointed by the court
14 if the parties are without sufficient financial means.

15 C. If the child is not otherwise represented by counsel and
16 requests an attorney prior to or during interrogation, or whenever
17 charged by information, as provided in subsection A of this section,
18 the court shall appoint an attorney, who shall not be a district
19 attorney, for the child regardless of any attempted waiver by the
20 parent, legal guardian, or other legal custodian of the child of the
21 right of the child to be represented by counsel. Counsel shall be
22 appointed by the court only upon determination by the court that the
23 parent, legal guardian or legal custodian is found to be indigent.
24 If indigency is established, the Oklahoma Indigent Defense System

1 shall represent the serious juvenile offender in accordance with
2 Section 1355.6 of Title 22 of the Oklahoma Statutes or the
3 applicable Office of the Public Defender shall represent the serious
4 juvenile offender in accordance with Section 138.5 of Title 19 of
5 the Oklahoma Statutes.

6 ~~C.~~ D. When a person is certified to stand trial as an adult or
7 a ~~youthful~~ serious juvenile offender as provided by the ~~Youthful~~
8 Serious Juvenile Offender Act, the accused person shall have all the
9 statutory and constitutional rights and protections of an adult
10 accused of a crime. All proceedings shall be as for a criminal
11 action and the provisions of Title 22 of the Oklahoma Statutes shall
12 apply, except as provided for in the ~~Youthful~~ Serious Juvenile
13 Offender Act. ~~All youthful offender~~ The court records for such a
14 ~~person and court file of a serious juvenile offender shall be~~
15 ~~considered~~ remain confidential unless and until such time that the
16 person is sentenced as an adult records and shall not be subject to
17 ~~the provisions of Chapter 6 of the Oklahoma Juvenile Code for the~~
18 offense in accordance with subsection H of Section 2-5-205 of this
19 title.

20 ~~D.~~ E. Proceedings against a ~~youthful~~ serious juvenile offender
21 shall be heard by any judge of the district court.

22 ~~E.~~ F. Upon arrest and detention of a person subject to the
23 provisions of Section 2-5-205 or 2-5-206 of this title, the person
24 has the same right to be released on bail as would an adult in the

1 same circumstances and, if detained, may be detained in a county
2 jail if separated by sight and sound from the adult population as
3 otherwise authorized by law. If no such county jail is available,
4 then such person may be detained at a juvenile detention facility.
5 The sheriff, chief of police, or juvenile or adult detention
6 facility operator shall forthwith notify the Office of Juvenile
7 Affairs of any such arrest and detention.

8 ~~F.~~ G. Upon certification for the imposition of an adult
9 sentence, a verdict of guilty or entry of a plea of guilty or nolo
10 contendere by a ~~youthful~~ serious juvenile offender who has been
11 certified for the imposition of an adult sentence as provided by
12 Section 2-5-208 of this title, the person may be detained as an
13 adult and, if incarcerated, may be incarcerated with the adult
14 population.

15 ~~G.~~ H. A child or ~~youthful~~ serious juvenile offender shall be
16 tried as an adult in all subsequent criminal prosecutions, and shall
17 not be subject to the jurisdiction of the juvenile court as a
18 juvenile delinquent or ~~youthful~~ serious juvenile offender processes
19 in any further proceedings if:

20 1. The child or ~~youthful~~ serious juvenile offender has been
21 certified to stand trial as an adult pursuant to any certification
22 procedure provided by law and is subsequently convicted of the
23 alleged offense or against whom the imposition of judgment and
24 sentence has been deferred; or

1 2. The ~~youthful~~ serious juvenile offender has been certified
2 for the imposition of an adult sentence as provided by Section 2-5-
3 208 of this title and is subsequently convicted of the alleged
4 offense or against whom the imposition of judgment and sentencing
5 has been deferred.

6 ~~H.~~ I. Except as otherwise provided in the ~~Youthful~~ Serious
7 Juvenile Offender Act, a person who has been certified as a ~~youthful~~
8 serious juvenile offender shall be prosecuted as a ~~youthful~~ serious
9 juvenile offender in all subsequent criminal proceedings until the
10 ~~youthful~~ serious juvenile offender has attained eighteen (18) years
11 of age.

12 All proceedings for the commission of a crime committed after a
13 ~~youthful~~ serious juvenile offender has reached eighteen (18) years
14 of age shall be adult proceedings.

15 SECTION 5. AMENDATORY 10A O.S. 2011, Section 2-5-205, is
16 amended to read as follows:

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

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

12 C. 1. Upon the filing of an adult criminal information against
13 such accused person, a warrant shall be issued which shall set forth
14 the rights of the accused person, and the rights of the parents,
15 guardian or next friend of the accused person to be present at the
16 preliminary hearing, to have an attorney present and to make
17 application for certification of such accused person as a ~~youthful~~
18 serious juvenile offender to the district court for the purpose of
19 prosecution as a ~~youthful~~ serious juvenile offender. The
20 information and all contents of the court file shall remain
21 confidential unless and until such time that the person is sentenced
22 as an adult for the offense.

23 2. The warrant shall be personally served together with a
24 certified copy of the information on the accused person and on a

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

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

23 4. Before service by publication is ordered, the court shall
24 conduct an inquiry to determine whether a thorough search has been

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~~ serious juvenile offender or a juvenile
5 before the start of the criminal preliminary hearing. If both a
6 motion for certification as a ~~youthful~~ serious juvenile offender and
7 a motion for certification as a juvenile are filed, they shall both
8 be heard at the same time. No motion for certification as a
9 ~~youthful~~ serious juvenile offender or certification as a juvenile
10 may be filed after the time specified in this subsection. Upon the
11 filing of such motion, the complete juvenile record of the accused
12 shall be made available to the district attorney and the accused
13 person.

14 2. The court shall commence a preliminary hearing within ninety
15 (90) days of the filing of the information, pursuant to Section 258
16 of Title 22 of the Oklahoma Statutes, to determine whether the crime
17 was committed and whether there is probable cause to believe the
18 accused person committed a crime. If the preliminary hearing is not
19 commenced within ninety (90) days of the date the accused person is
20 charged, the district court shall hold a hearing to determine the
21 reasons for delay utilizing the procedure set out in Section 812.2
22 of Title 22 of the Oklahoma Statutes, to ensure the preliminary
23 hearing is expedited. If the whereabouts of the accused are unknown
24 at the time of the filing of the information or if the accused is a

1 fugitive, the State of Oklahoma shall make reasonable efforts to
2 locate the accused in order to commence the proceedings. An accused
3 who flees the jurisdiction of the court or purposely avoids
4 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. An accused who fails to cooperate with
7 providing information in locating the parents of the accused,
8 guardian, or next friend for purpose of notice waives the right to
9 have the preliminary hearing commence within ninety (90) days of the
10 filing of the information. The court shall commence trial on the
11 matter within one hundred eighty (180) days of the filing of the
12 information, unless waived by the accused. An accused who is a
13 fugitive from justice or who fails to cooperate with providing
14 information in locating the parent, guardian, or next friend of the
15 accused for purpose of notice waives the right to have the trial
16 commence within one hundred eighty (180) days of the filing of the
17 information.

18 3. At the conclusion of the state's case at the criminal
19 preliminary hearing, the state and the accused person may offer
20 evidence to support or oppose the motions for certification as a
21 ~~youthful~~ serious juvenile offender or an alleged juvenile
22 delinquent. At the hearing on the motion for certification as a
23 juvenile, the burden of proof shall be on the accused to show by a
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1 preponderance of the evidence that the child should be certified as
2 a juvenile.

3 E. The court shall rule on any motions for certification as a
4 ~~youthful~~ serious juvenile offender or an alleged juvenile delinquent
5 before ruling on whether to bind the accused over for trial. When
6 ruling on a motion for certification as a ~~youthful~~ serious juvenile
7 offender or juvenile, the court shall give consideration to the
8 following guidelines with greatest weight to be given to paragraphs
9 1, 2 ~~and,~~ 3 and 6:

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

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

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

18 4. The sophistication and maturity of the accused person and
19 the capability of distinguishing right from wrong as determined by
20 consideration of the ~~person's psychological~~ certification evaluation
21 of the person, home, environmental situation, emotional attitude and
22 pattern of living;

1 5. The prospects for adequate protection of the public if the
2 accused person is processed through the ~~youthful~~ serious juvenile
3 offender system or the juvenile system;

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

8 7. Whether the offense occurred while the accused person was
9 escaping or on escape status from an institution for ~~youthful~~
10 serious juvenile offenders or delinquent children.

11 The court, in its decision on a motion for certification as a
12 ~~youthful~~ serious juvenile offender or juvenile, shall detail
13 findings of fact and conclusions of law to each of the above
14 considerations, and shall state that the court has considered each
15 of the guidelines in reaching its decision.

16 F. The order certifying a person as a ~~youthful~~ serious juvenile
17 offender or an alleged juvenile delinquent or denying the request
18 for certification as either a ~~youthful~~ serious juvenile offender or
19 an alleged juvenile delinquent shall be a final order, appealable to
20 the Court of Criminal Appeals when entered.

21 G. ~~An~~ Except on remand from the Court of Criminal Appeals, an
22 order certifying the accused person as a ~~youthful~~ serious juvenile
23 offender or an alleged juvenile delinquent shall not be reviewable
24 by the trial court.

1 H. Upon conviction as a serious juvenile offender, a sentence
2 may be imposed for the serious juvenile offender as provided by
3 Section 2-5-209 of this title. If the accused person is prosecuted
4 as an adult and is subsequently convicted of the alleged offense or
5 against whom the imposition of judgment and sentencing has been
6 deferred, the person may be incarcerated with the adult population
7 and shall be prosecuted as an adult in all subsequent criminal
8 proceedings.

9 I. If a person who is charged with murder in the first degree
10 is not convicted of that offense but is convicted of a different
11 offense, the court may on its own motion or at the request of the
12 district attorney continue the hearing for a sufficient period of
13 time to conduct an investigation and further hearing to determine if
14 the child should be held accountable for acts of the child as if the
15 child were an adult pursuant to the considerations of Section 2-2-
16 403 of this title. Provided, the preliminary hearing to determine
17 whether or not there is prosecutive merit to the complaint would not
18 be required.

19 SECTION 6. AMENDATORY 10A O.S. 2011, Section 2-5-206, is
20 amended to read as follows:

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

- 23 1. Murder in the second degree;
- 24 2. Kidnapping;

- 1 3. Manslaughter in the first degree;
- 2 4. Robbery with a dangerous weapon or a firearm or attempt
- 3 thereof;
- 4 5. Robbery in the first degree or attempt thereof;
- 5 6. Rape in the first degree or attempt thereof;
- 6 7. Rape by instrumentation or attempt thereof;
- 7 8. Forcible sodomy;
- 8 9. Lewd molestation;
- 9 10. Arson in the first degree or attempt thereof; or
- 10 11. Any offense in violation of Section 652 of Title 21 of the
- 11 Oklahoma Statutes,
- 12 shall be held accountable for such acts, upon conviction, as a
- 13 ~~youthful~~ serious juvenile offender.
- 14 B. Any person sixteen (16) or seventeen (17) years of age who
- 15 is charged with:
- 16 1. Burglary in the first degree or attempted burglary in the
- 17 first degree;
- 18 2. Battery or assault and battery on a state employee or
- 19 contractor while in the custody or supervision of the Office of
- 20 Juvenile Affairs;
- 21 3. Aggravated assault and battery of a police officer;
- 22 4. Intimidating a witness;
- 23 5. Trafficking in or manufacturing illegal drugs;
- 24 6. Assault or assault and battery with a deadly weapon;

1 7. Maiming;

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

6 9. Rape in the second degree; or

7 10. Use of a firearm while in commission of a felony,
8 shall be held accountable for such acts, upon conviction, as a
9 ~~youthful~~ serious juvenile offender.

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

16 D. 1. Upon the filing of the information against such alleged
17 ~~youthful~~ serious juvenile offender, a warrant shall be issued which
18 shall set forth the rights of the accused person, and the rights of
19 the parents, guardian or next friend of the accused person to be
20 present at the preliminary hearing, ~~and~~ to have an attorney present,
21 and to make application for certification of such accused person as
22 a juvenile delinquent. The information and all contents of the
23 court file shall remain confidential unless and until such time that
24 the person is sentenced as an adult for the offense.

1 2. The warrant shall be personally served together with a
2 certified copy of the information on the alleged ~~youthful~~ serious
3 juvenile offender and on a custodial parent, guardian or next friend
4 of the accused person.

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

24

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

5 E. The court shall commence a preliminary hearing within ninety
6 (90) days of the filing of the information pursuant to Section 258
7 of Title 22 of the Oklahoma Statutes, to determine whether the crime
8 was committed and whether there is probable cause to believe the
9 accused person committed the crime. If the preliminary hearing is
10 not commenced within ninety (90) days, the state shall be prohibited
11 from seeking an adult sentence unless the ninety-day requirement is
12 waived by the defendant. If the whereabouts of the accused are
13 unknown at the time of the filing of the information or if the
14 accused is a fugitive, the State of Oklahoma shall make reasonable
15 efforts to locate the accused in order to commence the proceedings.
16 An accused who flees the jurisdiction of the court or purposely
17 avoids apprehension for the charges, waives the right to have the
18 preliminary hearing commenced within ninety (90) days of the filing
19 of the information. An accused who fails to cooperate with
20 providing information in locating the accused parent, guardian, or
21 next friend for purpose of notice waives the right to have the
22 preliminary hearing commence within ninety (90) days of the filing
23 of the information. The court shall commence trial on the matter
24 within one hundred eighty (180) days of the filing of the

1 information, unless waived by the accused. An accused who is a
2 fugitive from justice or who fails to cooperate with providing
3 information in locating the parent, guardian, or next friend of the
4 accused for purpose of notice waives the right to have the trial
5 commence within one hundred eighty (180) days of the filing of the
6 information.

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

10 a. upon the filing of such motion, the complete juvenile
11 record of the accused shall be made available to the
12 district attorney and the accused person,

13 b. at the conclusion of the state's case at the criminal
14 preliminary hearing, the accused person may offer
15 evidence to support the motion for certification as a
16 child.

17 2. If no motion to certify the accused person to the juvenile
18 justice system has been filed, at the conclusion of the criminal
19 preliminary hearing the court may on its own motion hold a hearing
20 on the matter of the certification of the accused ~~youthful~~ serious
21 juvenile offender to the juvenile system.

22 3. The court shall rule on the certification motion before
23 ruling on whether to bind the accused over for trial. When ruling
24 on the certification motion, the court shall give consideration to

1 the following guidelines with the greatest weight given to
2 subparagraphs a, b ~~and~~, c and f:

3 a. whether the alleged offense was committed in an
4 aggressive, violent, premeditated or willful manner,

5 b. whether the offense was against persons, and if
6 personal injury resulted, the degree of personal
7 injury,

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

13 d. the sophistication and maturity of the accused person
14 and the accused person's capability of distinguishing
15 right from wrong as determined by consideration of the
16 ~~accused person's psychological~~ certification

17 evaluation of the accused person, home, environmental
18 situation, emotional attitude and pattern of living,

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

23 f. the reasonable likelihood of rehabilitation of the
24 accused person if the accused is found to have

1 committed the alleged offense, by the use of
2 procedures and facilities currently available to the
3 juvenile court, and

4 g. whether the offense occurred while the accused person
5 was escaping or in an escape status from an
6 institution for ~~youthful~~ serious juvenile offenders or
7 juvenile delinquents.

8 4. In its decision on the motion for certification as an
9 alleged juvenile delinquent, the court shall detail findings of fact
10 and conclusions of law to each of the above considerations and shall
11 state that the court has considered each of the guidelines in
12 reaching its decision.

13 5. An order certifying a person or denying such certification
14 to the juvenile justice system shall be a final order, appealable
15 when entered.

16 G. Upon conviction, sentence may be imposed as a sentence for a
17 ~~youthful~~ serious juvenile offender as provided by Section 2-5-209 of
18 this title. If the ~~youthful~~ serious juvenile offender sentence is
19 imposed as an adult sentence as provided by Section 2-5-208 of this
20 title, the convicted person may be incarcerated with the adult
21 population.

22 SECTION 7. AMENDATORY 10A O.S. 2011, Section 2-5-207, is
23 amended to read as follows:
24

1 Section 2-5-207. It is the intent of the Legislature to fully
2 utilize the ~~Youthful~~ Serious Juvenile Offender Act as a means to
3 protect the public while rehabilitating and holding youth
4 accountable for serious crimes. The Legislature finds that eligible
5 seventeen-year-olds should have the opportunity to be processed as
6 ~~youthful~~ serious juvenile offenders as provided by law and held
7 accountable through the various provisions of the ~~Youthful~~ Serious
8 Juvenile Offender Act for custody, institutional placement,
9 supervision, extended jurisdiction within the Office of Juvenile
10 Affairs, and the ability to transfer ~~youthful~~ serious juvenile
11 offenders to the Department of Corrections when incarceration or
12 additional supervision is required beyond the maximum age allowed in
13 the Office of Juvenile Affairs. No older youth should be deemed
14 ineligible or denied consideration as a ~~youthful~~ serious juvenile
15 offender who is otherwise lawfully eligible based upon the age of
16 the youth being seventeen (17) years, but it is the intent of the
17 Legislature that such ~~youthful~~ serious juvenile offender shall not
18 remain in the custody or under the supervision of the Office of
19 Juvenile Affairs beyond the ~~youthful~~ serious juvenile offender's
20 maximum age of ~~eighteen (18)~~ twenty-one (21) years and ~~five (5)~~
21 ~~months~~. To deny access to an otherwise eligible older youth without
22 cause is to circumvent the original intent of the Legislature in
23 creating the ~~Youthful~~ Serious Juvenile Offender Act.

24

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

3 Section 2-5-208. A. Whenever the district attorney believes
4 that there is good cause to believe that a person charged as a
5 ~~youthful~~ serious juvenile offender would not reasonably complete a
6 plan of rehabilitation or the public would not be adequately
7 protected if the person were to be sentenced as a ~~youthful~~ serious
8 juvenile offender, and should receive an adult sentence, the
9 district attorney shall file a motion for consideration of the
10 imposition of the sentence as for an adult if the person is
11 convicted:

12 1. Not more than thirty (30) days following formal arraignment
13 and such motion will be ruled upon by the trial court; or the
14 district attorney may file the motion to impose adult sentence
15 fourteen (14) days prior to the start of the preliminary hearing and
16 the preliminary hearing magistrate will rule on that motion. The
17 district attorney must elect when to file the motion for adult
18 sentence and if the motion is filed and argued to the magistrate, it
19 cannot again be filed and argued to the trial court after
20 arraignment; or

21 2. If, prior to that time, the accused person indicates to the
22 court that the accused person wishes to plead guilty or nolo
23 contendere, the court shall grant the state ten (10) days from that
24

1 date to file the motion required by this subsection, if requested by
2 the state.

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

6 C. 1. The court shall order ~~an investigation~~ a certification
7 evaluation to be conducted unless waived by the accused person with
8 approval of the court. Any such ~~investigation~~ evaluation required
9 shall be conducted by the Office of Juvenile Affairs.

10 2. At the hearing the court shall consider, with the greatest
11 weight given to subparagraphs a, b ~~and~~, c and f:

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

14 b. whether the offense was against persons and, if
15 personal injury resulted, the degree of injury,

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

21 d. the sophistication and maturity of the accused person
22 and the capability of distinguishing right from wrong
23 as determined by consideration of the ~~psychological~~
24 certification evaluation, home, environmental

1 situation, emotional attitude and pattern of living of
2 the accused person,

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

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

12 g. whether the offense occurred while the accused person
13 was escaping or on escape status from an institution
14 for ~~youthful~~ serious juvenile offenders or delinquent
15 children.

16 D. After the hearing and consideration of the report of the
17 investigation, the court shall certify the person as eligible for
18 the imposition of an adult sentence only if it finds that the state
19 has proven by clear and convincing evidence that there is good cause
20 to believe that the accused person would not reasonably complete a
21 plan of rehabilitation or that the public would not be adequately
22 protected if the person were to be sentenced as a ~~youthful~~ serious
23 juvenile offender.
24

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

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

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

20 G. Upon a verdict of guilty or a plea of guilty or nolo
21 contendere, the court may order the person to pay a fee to the
22 Office of Juvenile Affairs of not less than Twenty-five Dollars
23 (\$25.00), nor more than Five Hundred Dollars (\$500.00), for the
24 ~~presentence investigation~~ certification evaluation. In hardship

1 cases, the court may waive the fee or set the amount of the fee and
2 establish a payment schedule.

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

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

9 1. A ~~youthful~~ serious juvenile offender ~~presentence~~
10 ~~investigation~~ certification evaluation shall be conducted unless
11 waived by the ~~youthful~~ serious juvenile offender with approval of
12 the court or unless ~~an investigation~~ a certification evaluation is
13 conducted pursuant to subsection C of Section 2-5-208 of this title.
14 Any ~~presentence investigation~~ certification evaluation required by
15 this section shall be conducted by the Office of Juvenile Affairs;
16 and

17 2. The court shall conduct a hearing and shall consider, with
18 the greatest weight given to subparagraphs a, b ~~and~~, c and f:

- 19 a. whether the offense was committed in an aggressive,
20 violent, premeditated or willful manner,
21 b. whether the offense was against persons and, if
22 personal injury resulted, the degree of personal
23 injury,

24

- 1 c. the record and past history of the person, including
2 previous contacts with law enforcement agencies and
3 juvenile or criminal courts, prior periods of
4 probation and commitments to juvenile institutions,
- 5 d. the sophistication and maturity of the person and the
6 capability of distinguishing right from wrong as
7 determined by consideration of the ~~psychological~~
8 certification evaluation, home, environmental
9 situation, emotional attitude and pattern of living of
10 the person,
- 11 e. the prospects for adequate protection of the public if
12 the person is processed through the ~~youthful~~ serious
13 juvenile offender system or the juvenile system,
- 14 f. the reasonable likelihood of rehabilitation of the
15 person if found to have committed the offense, by the
16 use of procedures and facilities currently available
17 to the juvenile, and
- 18 g. whether the offense occurred while the person was
19 escaping or on escape status from an institution for
20 ~~youthful~~ serious juvenile offenders or delinquent
21 children.

22 B. 1. After the hearing and consideration of the ~~report of the~~
23 ~~presentence investigation~~ certification evaluation, the court shall
24 impose sentence as a ~~youthful~~ serious juvenile offender, and such

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

15 a. whether the ~~youthful~~ serious juvenile offender shall
16 be returned to the Office of Juvenile Affairs to
17 complete a treatment program, provided that the
18 treatment program shall not exceed the ~~youthful~~
19 serious juvenile offender's attainment of ~~eighteen~~
20 ~~(18)~~ twenty-one (21) years of age ~~and five (5) months~~.
21 At the conclusion of the treatment program, the
22 individual shall be returned to the sentencing court
23 for a determination under subparagraph b, c or d of
24 this paragraph,

1 b. whether the ~~youthful~~ serious juvenile offender shall
2 be placed in the custody of the Department of
3 Corrections,

4 c. whether the ~~youthful~~ serious juvenile offender shall
5 be placed on probation with the Department of
6 Corrections with a suspended or deferred sentence as
7 determined by the court, or

8 d. whether the ~~youthful~~ serious juvenile offender shall
9 be discharged from custody.

10 2. The sentence imposed shall not exceed the maximum sentence
11 already imposed in the originating sentence.

12 3. If a ~~youthful~~ serious juvenile offender has attained
13 eighteen (18) years of age but less than ~~eighteen (18)~~ twenty-one
14 (21) years of age ~~and five (5) months~~ prior to sentencing, that
15 individual shall be returned to the sentencing court upon attaining
16 ~~the age of eighteen (18)~~ twenty-one (21) years and five (5) months
17 of age if that individual has been sentenced to a period of
18 placement or treatment with the Office of Juvenile Affairs and has
19 remained in the custody of the Office of Juvenile Affairs following
20 the annual review hearings required pursuant to Section 2-5-210 of
21 this title. The court shall have the same dispositional options as
22 provided in subparagraphs b, c and d of paragraph 1 of this
23 subsection.

1 4. Any period of probation required by the sentencing court to
2 be served shall be supervised by:

3 a. the Office of Juvenile Affairs or designated
4 representative, if the ~~youthful~~ serious juvenile
5 offender is under eighteen (18) years of age, or

6 b. the Department of Corrections or designated
7 representative, upon the ~~youthful~~ serious juvenile
8 offender attaining eighteen (18) years of age.

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

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

19 7. The Office of Juvenile Affairs may make recommendations to
20 the court concerning the disposition of the ~~youthful~~ serious
21 juvenile offender.

22 C. A ~~youthful~~ serious juvenile offender who is seventeen (17)
23 or eighteen (18) years of age or older and who has been sentenced to
24 the custody of the Office of Juvenile Affairs may be detained in a

1 county jail pending placement in an Office of Juvenile Affairs
2 facility, provided the county jail meets the jail standards
3 promulgated by the State Department of Health for juvenile
4 offenders. Said ~~youthful~~ serious juvenile offender who is eighteen
5 (18) years of age or older may be held in the general population of
6 the county jail.

7 SECTION 10. AMENDATORY 10A O.S. 2011, Section 2-5-210,
8 is amended to read as follows:

9 Section 2-5-210. A. Whenever a ~~youthful~~ serious juvenile
10 offender is placed in the custody of or under the supervision of the
11 Office of Juvenile Affairs, the Office shall within ~~thirty (30)~~
12 sixty (60) days prepare and file with the court a ~~written~~
13 rehabilitation proposed individualized treatment plan for the
14 ~~youthful~~ serious juvenile offender. The court shall hold a
15 dispositional hearing within ten (10) days of the filing of the
16 proposed individualized treatment plan, unless good cause is shown
17 to have the hearing at a later time. At the dispositional hearing,
18 the court shall review, approve and adopt an individualized
19 treatment plan. The ~~rehabilitation~~ individualized treatment plan
20 shall be tailored to the individual needs and goals of the ~~youthful~~
21 serious juvenile offender while ensuring protection of the public
22 while the offender is in the custody or supervision of the Office of
23 Juvenile Affairs. The ~~rehabilitation~~ individualized treatment plan
24 shall include, but not be limited to:

1 1. ~~Clearly stated and measurable objectives which the youthful~~
2 ~~offender is expected to achieve~~ A plan based on the individual
3 treatment needs of the serious juvenile offender as determined by a
4 diagnostic evaluation and an individual assessment of the
5 psychological, emotional, developmental, social and education needs
6 of the serious juvenile offender; and

7 2. Identification of the specific services and programs that
8 will be provided to the ~~youthful~~ serious juvenile offender by the
9 Office of Juvenile Affairs to assist the ~~youthful~~ serious juvenile
10 offender in achieving the measurable objectives to be reached,
11 including, but not limited to, diagnostic testing consistent with
12 the current standards of medical practice. The plan shall be based
13 on a comprehensive risk and needs assessment;

14 3. Measurable objectives the serious juvenile offender is
15 expected to achieve and details of the proposed placement of the
16 serious juvenile offender along with the expected treatment duration
17 based on the individualized treatment plan; and

18 4. Any other necessary provisions as determined by the court
19 that will assist in the rehabilitation of the serious juvenile
20 offender.

21 B. The court shall schedule an annual review hearing in open
22 court for every ~~youthful~~ serious juvenile offender in the custody of
23 the Office of Juvenile Affairs. Such hearing may be scheduled
24 either upon the court's own motion or upon a motion filed by the

1 Office of Juvenile Affairs. Each annual review hearing shall be
2 scheduled and completed within the thirty-day period immediately
3 preceding the date the sentence was imposed upon the ~~youthful~~
4 serious juvenile offender. Notice shall be given to the ~~youthful~~
5 serious juvenile offender, the counsel, parent or guardian of the
6 ~~youthful~~ serious juvenile offender, the district attorney, and the
7 Office of Juvenile Affairs at the time the motion for review is made
8 or filed. The court, at its discretion, may schedule other review
9 hearings as the court deems necessary, after notice to the parties.
10 The court shall hold a review hearing for good cause shown, upon any
11 motion filed by the district attorney, the Office of Juvenile
12 Affairs, or the ~~youthful~~ serious juvenile offender for the purpose
13 of making a determination to:

14 1. Review the individualized treatment plan including any
15 revisions to the plan which have been made by the Office of Juvenile
16 Affairs since the last court review;

17 2. Review the progress of the serious juvenile offender in his
18 or her individualized treatment plan since the last review hearing
19 by the court. In addition, the court shall review and, if
20 necessary, amend the individualized treatment plan to ensure the
21 plan is meeting the treatment needs and goals of the serious
22 juvenile offender;

23 3. Order the ~~youthful~~ serious juvenile offender discharged from
24 the custody of the Office of Juvenile Affairs without a court

1 judgment of guilt, and order the verdict or plea of guilty or plea
2 of nolo contendere expunged from the record as provided in
3 paragraphs 1 through 5 of subsection C of Section 991c of Title 22
4 of the Oklahoma Statutes and dismiss the charge with prejudice to
5 any further action, if the court finds that the ~~youthful~~ serious
6 juvenile offender has reasonably completed the ~~rehabilitation~~
7 individualized treatment plan and objectives and that such dismissal
8 will not jeopardize public safety. If a ~~youthful~~ serious juvenile
9 offender has been discharged without a court judgment of guilt and
10 the charge has been dismissed with prejudice as provided in this
11 paragraph, upon the motion of the ~~youthful~~ serious juvenile offender
12 and the passage of three (3) years after the date of such discharge
13 and dismissal, the court may, in addition, order any law enforcement
14 agency over which the court has jurisdiction to produce all files
15 and records pertaining to the arrest and conviction of the ~~youthful~~
16 serious juvenile offender, and shall order the clerk of the court to
17 destroy the entire file and record of the case, including docket
18 sheets, index entries, court records, summonses, warrants or records
19 in the office of the clerk or which have been produced by a law
20 enforcement agency in which the name of the ~~youthful~~ serious
21 juvenile offender is mentioned. The court may order probation
22 officers and counselors of the Office of Juvenile Affairs to destroy
23 all records, reports, and social and clinical studies relating to
24 the ~~youthful~~ serious juvenile offender that are in the possession of

1 the Office of Juvenile Affairs, except when the documents are
2 necessary to maintain state or federal funding;

3 ~~2.~~ 4. Revoke an order of probation and place the ~~youthful~~
4 serious juvenile offender in the custody of the Office of Juvenile
5 Affairs if such offender is less than eighteen (18) years of age;

6 ~~3.~~ 5. Place the ~~youthful~~ serious juvenile offender on probation
7 under the supervision of the age-appropriate agency;

8 ~~4.~~ 6. Place the ~~youthful~~ serious juvenile offender if less than
9 eighteen (18) years of age in a sanction program operated or
10 contracted for by the Office of Juvenile Affairs community
11 placement, if the ~~youthful~~ serious juvenile offender fails to comply
12 with a ~~written~~ the individualized treatment plan of rehabilitation
13 or fails substantially to achieve reasonable treatment objectives
14 while in community or other nonsecure programs; or

15 ~~5.~~ 7. Transfer or bridge the ~~youthful~~ serious juvenile offender
16 to the custody or supervision of the Department of Corrections if
17 the court finds by clear and convincing evidence that the ~~youthful~~
18 serious juvenile offender has:

- 19 a. after certification as a ~~youthful~~ serious juvenile
20 offender, seriously injured or endangered the life or
21 health of another person by such person's violent
22 behavior,
- 23 b. escaped from the facility from which the ~~youthful~~
24 serious juvenile offender is being held,

- 1 c. committed a felony crime while in the custody or under
2 the supervision of the Office of Juvenile Affairs as
3 shown by a judgment entered following a verdict of
4 guilty, a plea of guilty or nolo contendere, or as
5 shown by clear and convincing evidence,
- 6 d. committed battery or assault and battery on a state
7 employee or contractor of a juvenile facility while in
8 the custody of such facility,
- 9 e. caused a serious disruption in the facility, smuggled
10 contraband into the facility, caused contraband to be
11 smuggled into the facility, or engaged in other types
12 of behavior which have endangered the life or health
13 of other residents or staff of the facility, ~~or~~
- 14 f. established a pattern of disruptive behavior not
15 conducive to the established policies and procedures
16 of the program, or
- 17 g. willfully, chronically and consistently refused to
18 participate in the treatment program.

19 The court, in its decision to transfer custody of the ~~youthful~~
20 serious juvenile offender to the custody of the Department of
21 Corrections, shall detail findings of fact and conclusions of law
22 addressing the grounds alleged in the motion of the state.

23 C. An order transferring custody of a ~~youthful~~ serious juvenile
24 offender to the Department of Corrections shall be deemed an adult

1 conviction and shall be recorded as such in the court records and
2 criminal history records of the offender. Such order shall be a
3 final order, appealable when entered. In addition to a judgment and
4 sentence for an adult conviction, the court shall provide to the
5 Department of Corrections a detailed memorandum or historical
6 statement of the ~~Youthful~~ Serious Juvenile Offender Act as applied
7 to the offender being transferred to the Department of Corrections,
8 including the date of the offense, the date of the adjudication as a
9 ~~youthful~~ serious juvenile offender, the date of the filing of the
10 motion to transfer custody of the offender to the adult criminal
11 system, and the date of the imposition of the adult sentence.

12 D. The court shall grant time-served credits against the adult
13 sentence imposed for any ~~youthful~~ serious juvenile offender
14 transferred to the Department of Corrections. For the purpose of
15 calculating time served to be applied toward any sentence imposed
16 upon a ~~youthful~~ serious juvenile offender, in the event a ~~youthful~~
17 serious juvenile offender has been placed in the custody or under
18 the supervision of the Office of Juvenile Affairs, the offender
19 shall receive day-for-day credit for the time spent in the custody
20 or under the supervision of the Office of Juvenile Affairs. Upon
21 commitment to the Department of Corrections, a ~~youthful~~ serious
22 juvenile offender shall also receive other credits as provided by
23 law for an adult inmate.

24

1 E. If authorized by the court, review hearings, other than
2 those scheduled for determinations as provided in paragraphs 1
3 through ~~5~~ 7 of subsection B of this section, may be conducted via
4 teleconference communications; provided, the attorney representing
5 the ~~youthful~~ serious juvenile offender shall be present at the
6 hearing. For purposes of this subsection, "teleconference
7 communication" means participation by the ~~youthful~~ serious juvenile
8 offender and facility staff in the hearing by interactive
9 telecommunication devices which permit both visual and auditory
10 communication among the necessary participants, the court, and the
11 ~~youthful~~ serious juvenile offender.

12 SECTION 11. AMENDATORY 10A O.S. 2011, Section 2-5-211,
13 is amended to read as follows:

14 Section 2-5-211. When committing a person who is, or has been,
15 certified as a ~~youthful~~ serious juvenile offender and is certified
16 eligible for the imposition ~~as~~ of an adult sentence pursuant to
17 Section 2-5-208 of this title, or certified as a ~~youthful~~ serious
18 juvenile offender and is being transferred to the Department of
19 Corrections for custody or supervision pursuant to Section 2-5-210
20 of this title, or sentenced as an adult after previously being
21 certified as a ~~youthful~~ serious juvenile offender, the judgment and
22 sentence shall clearly identify such person as a ~~youthful~~ serious
23 juvenile offender, or previous ~~youthful~~ serious juvenile offender,
24 and detail the history of the applications of the ~~Youthful~~ Serious

1 Juvenile Offender Act to such person that resulted in the current
2 commitment to the Department of Corrections.

3 SECTION 12. AMENDATORY 10A O.S. 2011, Section 2-5-212,
4 is amended to read as follows:

5 Section 2-5-212. A. Whenever a ~~youthful~~ serious juvenile
6 offender is committed to the custody of the Office of Juvenile
7 Affairs, the Office of Juvenile Affairs may:

8 1. Place the ~~youthful~~ serious juvenile offender in a state
9 training school or other institution or facility maintained by the
10 state for delinquents or ~~youthful~~ serious juvenile offenders;

11 2. Place the ~~youthful~~ serious juvenile offender in a group home
12 or community residential facility for delinquents or ~~youthful~~
13 serious juvenile offenders;

14 3. Place the ~~youthful~~ serious juvenile offender under community
15 supervision prior to or after a period of placement in one or more
16 of the facilities referred to in paragraphs 1 and 2 of this
17 subsection. The Office of Juvenile Affairs may place a ~~youthful~~
18 serious juvenile offender in his or her own home, or an independent
19 living or other similar living arrangement within the community of
20 the residence of the ~~youthful~~ serious juvenile offender only upon
21 the approval of the court; provided, the court shall not prohibit
22 the reintegration of the ~~youthful~~ serious juvenile offender into the
23 community except upon finding that the ~~youthful~~ serious juvenile
24 offender has not reasonably completed the ~~rehabilitation~~

1 individualized treatment plan objectives established as
2 preconditions for reintegration into the community or that the
3 public would not be adequately protected if the ~~youthful~~ serious
4 juvenile offender is reintegrated into the community; or

5 4. Place the ~~youthful~~ serious juvenile offender in a sanction
6 program if the ~~youthful~~ serious juvenile offender fails to comply
7 with a written individualized treatment plan ~~of rehabilitation~~ or
8 fails substantially to achieve reasonable treatment objectives while
9 in community or other nonsecure programs.

10 B. Placement of the ~~youthful~~ serious juvenile offender pursuant
11 to this section or any other provision of law shall be the
12 responsibility of the Office of Juvenile Affairs and shall occur as
13 soon as reasonably possible but not more than forty-five (45) days
14 following the filing and adoption of the written ~~rehabilitation~~
15 individualized treatment plan as provided in Section 2-5-210 of this
16 title. This placement time period may be extended upon the
17 declaration of an emergency by the Board of Juvenile Affairs. For
18 the purposes of this section, "emergency" means any situation that
19 places the health, safety and well-being of the residents or staff
20 in imminent peril. The court shall not have authority to require
21 specific placement of a ~~youthful~~ serious juvenile offender in a time
22 frame which would require the removal of any other juvenile or
23 ~~youthful~~ serious juvenile offender from such placement.

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1 C. The Office of Juvenile Affairs shall be responsible for the
2 care and control of a ~~youthful~~ serious juvenile offender placed in
3 the custody of the Office of Juvenile Affairs, and shall have the
4 duty and the authority to provide food, clothing, shelter, ordinary
5 medical care, education, discipline and in an emergency to authorize
6 surgery or other extraordinary care. The medical care, surgery and
7 extraordinary care shall be charged to the appropriate agency where
8 the ~~youthful~~ serious juvenile offender qualifies for the care under
9 law, rule, regulation or administrative order or decision. Nothing
10 in this section shall abrogate the right of a ~~youthful~~ serious
11 juvenile offender to any benefits provided through public funds nor
12 the parent's statutory duty or responsibility to provide said
13 necessities; further, no person, agency or institution shall be
14 liable in a civil suit for damages for authorizing or not
15 authorizing surgery or extraordinary care in an emergency, as
16 determined by competent medical authority. A ~~youthful~~ serious
17 juvenile offender placed in the custody of the Office of Juvenile
18 Affairs who has attained eighteen (18) years of age or older may
19 authorize and consent to the medical care sought on behalf of the
20 ~~youthful~~ serious juvenile offender by the Office of Juvenile Affairs
21 and to be provided to the ~~youthful~~ serious juvenile offender by a
22 qualified health care professional. No state employee shall be
23 liable for the costs of any medical care or behavioral health
24

1 services provided to any child in the custody of the Office of
2 Juvenile Affairs.

3 D. A ~~youthful~~ serious juvenile offender in the custody of the
4 Office of Juvenile Affairs shall:

5 1. Be entitled to the rights afforded juvenile delinquents
6 pertaining to any due process afforded delinquents in regard to
7 movement from a nonsecure to a secure placement; ~~and~~

8 2. As appropriate to the age and circumstances of the ~~youthful~~
9 serious juvenile offender, be provided education, employment, and
10 employment skills and vocational and technical or higher education
11 services, apprenticeship programs and similar opportunities; and

12 3. Be provided an individualized treatment plan based on the
13 findings of a risk and needs assessment, not solely upon the nature
14 of the offense committed by the serious juvenile offender.

15 SECTION 13. AMENDATORY 10A O.S. 2011, Section 2-5-213,
16 is amended to read as follows:

17 Section 2-5-213. A. Upon the motion of a person who has been
18 convicted and sentenced as a ~~youthful~~ serious juvenile offender and
19 who has been subsequently transferred to the adult system pursuant
20 to Section 2-5-210 of this title, with the recommendation of the
21 sentencing court, the Governor may grant a full and complete pardon
22 and restore citizenship to any person who has been convicted and
23 sentenced as a ~~youthful~~ serious juvenile offender and who has
24 completed the sentence or been discharged from parole.

1 B. Upon the motion of a person convicted as a ~~youthful~~ serious
2 juvenile offender, and three (3) years after the expiration of the
3 sentence of the ~~youthful~~ serious juvenile offender, the court may
4 set aside the conviction if:

5 1. The court has previously found that the person has
6 reasonably complied with the rehabilitation plan and objectives;

7 2. The person was discharged from supervision by the Office of
8 Juvenile Affairs, or was granted early discharge from such
9 supervision by the court; or

10 3. The person has completed the sentence imposed as a result of
11 his first conviction as a ~~youthful~~ serious juvenile offender and has
12 no subsequent convictions.

13 If a conviction is set aside pursuant to this subsection, the
14 ~~youthful~~ serious juvenile offender shall thereafter be released from
15 all penalties and disabilities resulting from the offense for which
16 such person was convicted, including but not limited to, any
17 disqualification for any employment or occupational license, or
18 both, created by any other provision of law. The court may in
19 addition order any law enforcement agency over whom the court has
20 jurisdiction to produce all files and records pertaining to said
21 arrest and conviction of the ~~youthful~~ serious juvenile offender and
22 shall order the clerk of the court to destroy the entire file and
23 record of the case, including docket sheets, index entries, court
24 records, summons, warrants or records in the office of the clerk or

1 which have been produced by a law enforcement agency in which the
2 name of the ~~youthful~~ serious juvenile offender is mentioned. The
3 court may order probation officers and counselors to destroy all
4 records, reports, and social and clinical studies relating to said
5 ~~youthful~~ serious juvenile offender that are in their possession
6 except when said documents are necessary to maintain state or
7 federal funding.

8 SECTION 14. AMENDATORY 10A O.S. 2011, Section 2-5-301,
9 is amended to read as follows:

10 Section 2-5-301. Any child under eighteen (18) years of age who
11 is a legal resident or the child of legal residents of the State of
12 Oklahoma who is detained, held or arrested for any offense pursuant
13 to any provision of the Juvenile Code or Criminal Code of this
14 state, including such persons subject to adult prosecution, ~~youthful~~
15 serious juvenile offender proceedings, certification as an adult,
16 reverse certification or juvenile proceedings, shall be identified
17 within seventy-two (72) hours of such detention or arrest for
18 educational needs and shall be afforded such educational
19 opportunities by the State Department of Education, local technology
20 center school districts or local school districts without delay
21 while in such facility or jail, including city, county and state
22 jails, holding facilities and juvenile or correctional institutions.

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1 SECTION 15. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2-5-302 of Title 10A, unless
3 there is created a duplication in numbering, reads as follows:

4 A. For purposes of commitment of a person eighteen (18) years
5 of age or older, serious juvenile offender or delinquent to a state
6 mental health facility, a psychiatric hospital, or a private mental
7 health facility pursuant to the inpatient commitment procedures
8 provided in Section 5-101 of Title 43A of the Oklahoma Statutes, no
9 confinement of such person in a secure facility of the Office of
10 Juvenile Affairs shall be considered confinement in a jail or
11 correctional facility nor shall such person be considered to have
12 criminal charges pending against him or her. A person who has
13 reached eighteen (18) years of age shall not be disqualified for
14 inpatient commitment pursuant to the provisions of Section 5-101 of
15 Title 43A of the Oklahoma Statutes due to any serious juvenile
16 offender or juvenile delinquent adjudication or by reason of any
17 court order granting custody of or supervision by the Office of
18 Juvenile Affairs. Provided, a facility or hospital shall be
19 authorized to take reasonable steps as necessary to assure
20 protection of the public, the residents of the facility or hospital,
21 and the person including, but not limited to, segregating the person
22 or utilizing private facilities.

23 B. No order placing a serious juvenile offender or delinquent
24 youth who has reached the age of eighteen (18) years in the custody

1 or under the supervision of the Office of Juvenile Affairs shall
2 disqualify such person from eligibility for any insurance program
3 provided or approved by the State of Oklahoma.

4 C. When a serious juvenile offender or juvenile delinquent
5 reaches the age of eighteen (18) years, such person may be placed in
6 a secure facility separated from the population that is under
7 eighteen (18) years of age where such population management and
8 control may be the same as that applicable to the adult population
9 in correctional facilities. Placements of such youth in secure
10 facilities shall be in accordance with rules promulgated by the
11 Board of Juvenile Affairs. When such person is released from a
12 secure facility, the person may be placed in a community-based
13 residential setting or transitional living center where population
14 management and control may be the same as that provided in adult
15 community placements operated or contracted by the Department of
16 Corrections, and such placement shall be exempt from the licensure
17 requirements of the Child Care Facilities Licensing Act.

18 SECTION 16. REPEALER 10A O.S. 2011, Section 2-5-101, is
19 hereby repealed.

20 SECTION 17. This act shall become effective November 1, 2012.

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