

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 HOUSE BILL 2412

By: Roberts (Dustin)

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5  
6 AS INTRODUCED

7 An Act relating to children and juvenile code;  
8 amending 10A O.S. 2011, Sections 2-5-205 and 2-5-206,  
9 which relate to the Youthful Offender Act; deleting  
10 youthful offender eligibility for juveniles charged  
11 with murder; deleting youthful offender certification  
12 procedures; deleting certain offense from youthful  
13 offender eligibility list; and providing an effective  
14 date.

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

16 SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-5-205, is  
17 amended to read as follows:

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

24 B. Any person thirteen (13), fourteen (14), fifteen (15),  
sixteen (16) or seventeen (17) years of age who is charged with  
murder in the first or second degree at that time shall be held

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

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

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

24

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

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

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

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

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

1 of the information. An accused who fails to cooperate with  
2 providing information in locating the parents of the accused,  
3 guardian, or next friend for purpose of notice waives the right to  
4 have the preliminary hearing commence within ninety (90) days of the  
5 filing of the information.

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

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

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

18 ~~2. Whether the offense was against persons, and, if personal  
19 injury resulted, the degree of personal injury;~~

20 ~~3. The record and past history of the accused person, including  
21 previous contacts with law enforcement agencies and juvenile or  
22 criminal courts, prior periods of probation and commitments to  
23 juvenile institutions;~~

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

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

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

12       ~~7. Whether the offense occurred while the accused person was~~  
13 ~~escaping or on escape status from an institution for youthful~~  
14 ~~offenders or delinquent children.~~

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

20       ~~F. The order certifying a person as a youthful offender or an~~  
21 ~~alleged juvenile delinquent or denying the request for certification~~  
22 ~~as either a youthful offender or an alleged juvenile delinquent~~  
23 ~~shall be a final order, appealable to the Court of Criminal Appeals~~  
24 ~~when entered.~~

1 ~~G. An order certifying the accused person as a youthful~~  
2 ~~offender or an alleged juvenile delinquent shall not be reviewable~~  
3 ~~by the trial court.~~

4 ~~H. D.~~ If the accused person is prosecuted as ~~an adult~~ and is  
5 subsequently convicted of the alleged offense or against whom the  
6 imposition of judgment and sentencing has been deferred, the person  
7 may be incarcerated with the adult population and shall be  
8 prosecuted as an adult in all subsequent criminal proceedings.

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

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

- 13 1. ~~Murder in the second degree;~~
- 14 2. Kidnapping;
- 15 3. 2. Manslaughter in the first degree;
- 16 4. 3. Robbery with a dangerous weapon or a firearm or attempt  
17 thereof;
- 18 5. 4. Robbery in the first degree or attempt thereof;
- 19 6. 5. Rape in the first degree or attempt thereof;
- 20 7. 6. Rape by instrumentation or attempt thereof;
- 21 8. 7. Forcible sodomy;
- 22 9. 8. Lewd molestation;
- 23 10. 9. Arson in the first degree or attempt thereof; or

1       ~~11.~~ 10. Any offense in violation of Section 652 of Title 21 of  
2 the Oklahoma Statutes,  
3 shall be held accountable for such acts as a youthful offender.

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

6       1. Burglary in the first degree or attempted burglary in the  
7 first degree;

8       2. Battery or assault and battery on a state employee or  
9 contractor while in the custody or supervision of the Office of  
10 Juvenile Affairs;

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

12       4. Intimidating a witness;

13       5. Trafficking in or manufacturing illegal drugs;

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

15       7. Maiming;

16       8. Residential burglary in the second degree after two or more  
17 adjudications that are separated in time for delinquency for  
18 committing burglary in the first degree or residential burglary in  
19 the second degree;

20       9. Rape in the second degree; or

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

23       C. The district attorney may file a petition alleging the  
24 person to be a delinquent or may file an information against the

1 accused person charging the person as a youthful offender. The  
2 district attorney shall notify the Office of Juvenile Affairs upon  
3 the filing of youthful offender charges.

4 D. 1. Upon the filing of the information against such alleged  
5 youthful offender, a warrant shall be issued which shall set forth  
6 the rights of the accused person, and the rights of the parents,  
7 guardian or next friend of the accused person to be present at the  
8 preliminary hearing, and to have an attorney present.

9 2. The warrant shall be personally served together with a  
10 certified copy of the information on the alleged youthful offender  
11 and on a custodial parent, guardian or next friend of the accused  
12 person.

13 3. When personal service of a custodial parent, guardian or  
14 next friend of the alleged youthful offender cannot be effected,  
15 service may be made by certified mail to the last-known address of  
16 the person, requesting a return receipt from the addressee only. If  
17 delivery is refused, notice may be given by mailing the warrant and  
18 a copy of the information on the accused person by regular first-  
19 class mail to the address where the person to be notified refused  
20 delivery of the notice sent by certified mail. Where the address of  
21 a custodial parent, guardian or next friend is not known, or if the  
22 mailed warrant and copy of the information on the accused person is  
23 returned for any reason other than refusal of the addressee to  
24 accept delivery, after a distinct and meaningful search of all

1 reasonably available sources to ascertain the whereabouts of a  
2 custodial parent, guardian or next friend has been conducted, the  
3 court may order that notice of the hearing be given by publication  
4 one time in a newspaper of general circulation in the county. In  
5 addition, the court may order other means of service of notice that  
6 the court deems advisable or in the interests of justice.

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

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

1 of the information. An accused who fails to cooperate with  
2 providing information in locating the accused parent, guardian, or  
3 next friend for purpose of notice waives the right to have the  
4 preliminary hearing commence within ninety (90) days of the filing  
5 of the information.

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

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

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

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

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

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

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

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

22 f. the reasonable likelihood of rehabilitation of the  
23 accused person if the accused is found to have  
24 committed the alleged offense, by the use of

1 procedures and facilities currently available to the  
2 juvenile court, and

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

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

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

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

20 SECTION 3. This act shall become effective November 1, 2014.

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22 54-2-8159 GRS 01/09/14  
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