

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2731

By: Cleveland

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6 AS INTRODUCED

7 An Act relating to crimes and punishments; making
8 certain acts unlawful; providing penalties; defining
9 term; amending 10A O.S. 2011, Section 2-5-206, which
10 relates to the Youthful Offender Act; adding crime to
list of offenses that mandates youthful offender
status; providing for codification; and providing an
effective date.

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

14 SECTION 1. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 650.12 of Title 21, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Every person who, with intent to do bodily harm and without
18 justifiable or excusable cause, commits any assault and battery upon
19 the person of another that causes significant bodily injury shall,
20 upon conviction, be guilty of a felony punishable by imprisonment in
21 the custody of the Department of Corrections for a term of not less
22 than one (1) year, or by a fine not exceeding Five Hundred Dollars
23 (\$500.00), or by both such fine and imprisonment.

1 B. Every person who uses photographic, electronic or video
2 equipment to capture an image or video of a person that is
3 committing an assault and battery upon another person and
4 subsequently prints, publishes, reproduces, exchanges or
5 disseminates such image or video of the assault and battery shall,
6 upon conviction, be guilty of a misdemeanor punishable by
7 imprisonment in the county jail for not more than one (1) year, or
8 by a fine not exceeding Five Hundred Dollars (\$500.00), or by both
9 such fine and imprisonment.

10 C. For purposes of this section, the term "significant injury"
11 means an injury to the body that requires hospitalization or
12 immediate medical attention after the injury was inflicted.

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

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

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

1 8. Forcible sodomy;

2 9. Lewd molestation;

3 10. Arson in the first degree or attempt thereof; ~~or~~

4 11. Any offense in violation of Section 652 of Title 21 of the
5 Oklahoma Statutes; or

6 12. Assault and battery that causes significant bodily injury
7 as provided in Section 1 of this act,

8 shall be held accountable for such acts as a youthful offender.

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

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

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

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

17 4. Intimidating a witness;

18 5. Trafficking in or manufacturing illegal drugs;

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

20 7. Maiming;

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

1 9. Rape in the second degree; or

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

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

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

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

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

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

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

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

1 accused is a fugitive, the State of Oklahoma shall make reasonable
2 efforts to locate the accused in order to commence the proceedings.
3 An accused who flees the jurisdiction of the court or purposely
4 avoids apprehension for the charges, waives the right to have the
5 preliminary hearing commenced within ninety (90) days of the filing
6 of the information. An accused who fails to cooperate with
7 providing information in locating the accused parent, guardian, or
8 next friend for purpose of notice waives the right to have the
9 preliminary hearing commence within ninety (90) days of the filing
10 of the information.

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

14 a. upon the filing of such motion, the complete juvenile
15 record of the accused shall be made available to the
16 district attorney and the accused person,

17 b. at the conclusion of the state's case at the criminal
18 preliminary hearing, the accused person may offer
19 evidence to support the motion for certification as a
20 child.

21 2. If no motion to certify the accused person to the juvenile
22 justice system has been filed, at the conclusion of the criminal
23 preliminary hearing the court may on its own motion hold a hearing
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1 on the matter of the certification of the accused youthful offender
2 to the juvenile system.

3 3. The court shall rule on the certification motion before
4 ruling on whether to bind the accused over for trial. When ruling
5 on the certification motion, the court shall give consideration to
6 the following guidelines with the greatest weight given to
7 subparagraphs a, b and c:

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

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

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

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

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- 1 e. the prospects for adequate protection of the public if
2 the accused person is processed through the youthful
3 offender system or the juvenile system,
4 f. the reasonable likelihood of rehabilitation of the
5 accused person if the accused is found to have
6 committed the alleged offense, by the use of
7 procedures and facilities currently available to the
8 juvenile court, and
9 g. whether the offense occurred while the accused person
10 was escaping or in an escape status from an
11 institution for youthful offenders or juvenile
12 delinquents.

13 4. In its decision on the motion for certification as an
14 alleged juvenile delinquent, the court shall detail findings of fact
15 and conclusions of law to each of the above considerations and shall
16 state that the court has considered each of the guidelines in
17 reaching its decision.

18 5. An order certifying a person or denying such certification
19 to the juvenile justice system shall be a final order, appealable
20 when entered.

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

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