

1 ENGROSSED HOUSE AMENDMENT

2 TO

3 ENGROSSED SENATE BILL NO. 410

By: Brooks of the Senate

and

Johnson of the House

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6
7 An Act relating to juvenile offenses; amending 10A
8 O.S. 2011, Section 2-5-206, which relates to youthful
9 offender guidelines; modifying inclusions; and
10 providing an effective date.

11 AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
12 and insert

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14 "An Act relating to juvenile offenses; amending 10A
15 O.S. 2011, Section 2-5-206, which relates to
16 youthful offender guidelines; making persons charged
17 with certain crime eligible for youthful offender
18 status; modifying inclusions; and providing an
19 effective date.

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

20 SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-5-206, is
21 amended to read as follows:

22 Section 2-5-206. A. Any person thirteen (13), fourteen (14),
23 fifteen (15), sixteen (16) or seventeen (17) years of age who is
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1 charged with accessory to murder in the first degree shall be held
2 accountable to such acts as a youthful offender.

3 B. Any person fifteen (15), sixteen (16) or seventeen (17)
4 years of age who is charged with:

- 5 1. Murder in the second degree;
- 6 2. Kidnapping;
- 7 3. Manslaughter in the first degree;
- 8 4. Robbery with a dangerous weapon or a firearm or attempt

9 thereof;

- 10 5. Robbery in the first degree or attempt thereof;
- 11 6. Rape in the first degree or attempt thereof;
- 12 7. Rape by instrumentation or attempt thereof;
- 13 8. Forcible sodomy;
- 14 9. Lewd molestation;
- 15 10. Arson in the first degree or attempt thereof; ~~or~~
- 16 11. Accessory to any offense listed in paragraphs 1 through 10

17 of this subsection; or

18 12. Any offense in violation of Section 652 of Title 21 of the
19 Oklahoma Statutes,
20 shall be held accountable for such acts as a youthful offender.

21 ~~B.~~ C. Any person sixteen (16) or seventeen (17) years of age
22 who is charged with:

- 23 1. Burglary in the first degree or attempted burglary in the
24 first degree;

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

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

5 4. Intimidating a witness;

6 5. Trafficking in or manufacturing illegal drugs;

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

8 7. Maiming;

9 8. Residential burglary in the second degree after two or more
10 adjudications that are separated in time for delinquency for
11 committing burglary in the first degree or residential burglary in
12 the second degree;

13 9. Rape in the second degree; ~~or~~

14 10. Use of a firearm while in commission of a felony; or

15 11. Accessory to any offense listed in paragraphs 1 through 10
16 of this subsection,

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

18 ~~C.~~ D. The district attorney may file a petition alleging the
19 person to be a delinquent or may file an information against the
20 accused person charging the person as a youthful offender. The
21 district attorney shall notify the Office of Juvenile Affairs upon
22 the filing of youthful offender charges.

23 ~~D.~~ E. 1. Upon the filing of the information against such
24 alleged youthful offender, a warrant shall be issued which shall set

1 forth the rights of the accused person, and the rights of the
2 parents, guardian or next friend of the accused person to be present
3 at the preliminary hearing, and to have an attorney present.

4 2. The warrant shall be personally served together with a
5 certified copy of the information on the alleged youthful offender
6 and on a custodial parent, guardian or next friend of the accused
7 person.

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

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

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

3 ~~F.~~ G. 1. The accused person may file a motion for
4 certification to the juvenile justice system before the start of the
5 criminal preliminary hearing:

6 a. upon the filing of such motion, the complete juvenile
7 record of the accused shall be made available to the
8 district attorney and the accused person,

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

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

18 3. The court shall rule on the certification motion before
19 ruling on whether to bind the accused over for trial. When ruling
20 on the certification motion, the court shall give consideration to
21 the following guidelines with the greatest weight given to
22 subparagraphs a, b and c:

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

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

1 institution for youthful offenders or juvenile
2 delinquents.

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

8 5. An order certifying a person or denying such certification
9 to the juvenile justice system shall be a final order, appealable
10 when entered.

11 ~~G. H.~~ Upon conviction, sentence may be imposed as a sentence
12 for a youthful offender as provided by Section 2-5-209 of this
13 title. If the youthful offender sentence is imposed as an adult
14 sentence as provided by Section 2-5-208 of this title, the convicted
15 person may be incarcerated with the adult population.

16 SECTION 2. This act shall become effective November 1, 2015."
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