

1 ENGROSSED HOUSE
2 BILL NO. 3033

By: Jordan of the House

3 and

4 Griffin of the Senate

5
6
7 [children - Oklahoma Juvenile Code - allowing child
8 to request preliminary hearing in specified cases -
9 effective date]
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12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-2-401, is
14 amended to read as follows:

15 Section 2-2-401. A. In adjudicatory hearings to determine if a
16 child is delinquent ~~or in need of supervision~~, any person entitled
17 to service of summons or the state shall have the right to demand a
18 trial by jury, which shall be granted as in other cases, unless
19 waived, or the judge on the judge's own motion may call a jury to
20 try any such case. Such jury shall consist of six persons.

21 B. In adjudicatory hearings to determine if a child is in need
22 of supervision, any person entitled to service of summons or the
23 state shall have the right to demand a nonjury trial, which shall be
24 granted as in other cases, unless waived.

1 SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-2-403, is
2 amended to read as follows:

3 Section 2-2-403. A. Except as otherwise provided by law, if a
4 child is charged with a delinquent act as a result of an offense
5 which would be a felony if committed by an adult, the court on its
6 own motion or at the request of the child or the district attorney
7 shall conduct a preliminary hearing to determine whether or not
8 there is prosecutive merit to the complaint. If the court finds
9 that prosecutive merit exists, it shall continue the hearing for a
10 sufficient period of time to conduct an investigation and further
11 hearing to determine if the child should be held accountable for
12 acts of the child as if the child were an adult if the child should
13 be found to have committed the alleged act or omission.

14 Consideration shall be given to:

15 1. The seriousness of the alleged offense to the community, and
16 whether the alleged offense was committed in an aggressive, violent,
17 premeditated or willful manner;

18 2. Whether the offense was against persons or property, greater
19 weight being given to transferring the accused person to the adult
20 criminal justice system for offenses against persons and, if
21 personal injury resulted, the degree of personal injury;

22 3. The sophistication and maturity of the juvenile and
23 capability of the juvenile of distinguishing right from wrong as
24 determined by consideration of a psychological evaluation of the

1 juvenile, home, environmental situation, emotional attitude and
2 pattern of living;

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

8 5. The prospects for adequate protection of the public;

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

13 7. Whether the offense occurred while the juvenile was escaping
14 or in an escape status from an institution for delinquent children.

15 After the investigation and hearing, the court may in its
16 discretion proceed with the juvenile proceeding, or it shall state
17 its reasons in writing and shall certify, based on clear and
18 convincing evidence, that the child shall be held accountable for
19 acts of the child as if the child were an adult and shall be held
20 for proper criminal proceedings for the specific offense charged, by
21 any other division of the court which would have trial jurisdiction
22 of the offense if committed by an adult. The juvenile proceeding
23 shall not be dismissed until the criminal proceeding has commenced
24 and if no criminal proceeding commences within thirty (30) days of

1 the date of the certification, unless stayed pending appeal, the
2 court shall proceed with the juvenile proceeding and the
3 certification shall lapse.

4 If not included in the original summons, notice of a hearing to
5 consider whether a child should be certified for trial as an adult
6 shall be given to all persons who are required to be served with a
7 summons at the commencement of a juvenile proceeding, but
8 publication in a newspaper when the address of a person is unknown
9 is not required. The purpose of the hearing shall be clearly stated
10 in the notice.

11 B. Prior to the entry of any order of certification, any child
12 in custody shall have the same right to be released upon bail as
13 would an adult under the same circumstances. Subsequent to the
14 entry of an order that a child stand trial as an adult, the child
15 shall have all the statutory and constitutional rights and
16 protections of an adult accused of a crime but shall, while awaiting
17 trial and for the duration of the trial, be detained in a jail cell
18 or ward entirely separate from prisoners who are eighteen (18) years
19 of age or over. Upon conviction, the juvenile may be incarcerated
20 with the adult population. If, prior to the entry of any order of
21 certification, the child becomes eighteen (18) years of age, the
22 child may be detained in a county jail or released on bail. If a
23 child is certified to stand trial as an adult, the court shall make
24 every effort to avoid duplication of the adult preliminary hearing

1 and the prosecutorial hearing in the juvenile certification process.
2 The parties may jointly stipulate to the court that the record for
3 the prosecutorial merit hearing in the juvenile proceeding be used
4 for all or part of the preliminary hearing.

5 C. Any child who has been certified to stand trial as an adult
6 pursuant to any order entered by any competent court of this state
7 or any other state shall be tried as an adult in all subsequent
8 criminal prosecutions, and shall not be subject to the jurisdiction
9 of the juvenile court or be eligible to be tried as a youthful
10 offender in any further proceedings.

11 D. An order either certifying a person as a child or an adult
12 pursuant to subsection A of this section or denying such
13 certification shall be a final order, appealable when entered and
14 shall not be modified.

15 SECTION 3. AMENDATORY 10A O.S. 2011, Section 2-5-206, is
16 amended to read as follows:

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

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

- 1 6. Rape in the first degree or attempt thereof;
- 2 7. Rape by instrumentation or attempt thereof;
- 3 8. Forcible sodomy;
- 4 9. Lewd molestation;
- 5 10. Possession of child pornography, but not child pornography
- 6 that is punishable by subsection B of Section 2-8-221 of this title;
- 7 11. Arson in the first degree or attempt thereof; or
- 8 ~~11.~~ 12. Any offense in violation of Section 652 of Title 21 of
- 9 the Oklahoma Statutes,
- 10 shall be held accountable for such acts as a youthful offender.
- 11 B. Any person sixteen (16) or seventeen (17) years of age who
- 12 is charged with:
- 13 1. Burglary in the first degree or attempted burglary in the
- 14 first degree;
- 15 2. Battery or assault and battery on a state employee or
- 16 contractor while in the custody or supervision of the Office of
- 17 Juvenile Affairs;
- 18 3. Aggravated assault and battery of a police officer;
- 19 4. Intimidating a witness;
- 20 5. Trafficking in or manufacturing illegal drugs;
- 21 6. Assault or assault and battery with a deadly weapon;
- 22 7. Maiming;
- 23 8. Residential burglary in the second degree after two or more
- 24 adjudications that are separated in time for delinquency for

1 committing burglary in the first degree or residential burglary in
2 the second degree;

3 9. Rape in the second degree; or

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

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

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

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

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

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

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

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

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

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

- 16 a. upon the filing of such motion, the complete juvenile
17 record of the accused shall be made available to the
18 district attorney and the accused person,
19 b. at the conclusion of the state's case at the criminal
20 preliminary hearing, the accused person may offer
21 evidence to support the motion for certification as a
22 child.

23 2. If no motion to certify the accused person to the juvenile
24 justice system has been filed, at the conclusion of the criminal

1 preliminary hearing the court may on its own motion hold a hearing
2 on the matter of the certification of the accused youthful offender
3 to the juvenile system.

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

- 9 a. whether the alleged offense was committed in an
10 aggressive, violent, premeditated or willful manner,
- 11 b. whether the offense was against persons, and if
12 personal injury resulted, the degree of personal
13 injury,
- 14 c. the record and past history of the accused person,
15 including previous contacts with law enforcement
16 agencies and juvenile or criminal courts, prior
17 periods of probation and commitments to juvenile
18 institutions,
- 19 d. the sophistication and maturity of the accused person
20 and the accused person's capability of distinguishing
21 right from wrong as determined by consideration of the
22 accused person's psychological evaluation, home,
23 environmental situation, emotional attitude and
24 pattern of living,

- 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 4. This act shall become effective November 1, 2016.

4 Passed the House of Representatives the 7th day of March, 2016.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ___ day of _____, 2016.

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Presiding Officer of the Senate

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