ENGROSSED SENATE
BILL NO. 410 By: Brooks of the Senate

and

Johnson of the House

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

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

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

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

1. Murder in the second degree;

2. Kidnapping;

3. Manslaughter in the first degree;

4. Robbery with a dangerous weapon or a firearm or attempt thereof;

5. Robbery in the first degree or attempt thereof;

6. Rape in the first degree or attempt thereof;

7. Rape by instrumentation or attempt thereof;

8. Forcible sodomy;

9. Lewd molestation;

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

11. Accessory to murder in any degree;

12. Accessory to any offense listed in this section; or

13. Any offense in violation of Section 652 of Title 21 of the Oklahoma Statutes,

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

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

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

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

3. Aggravated assault and battery of a police officer;

4. Intimidating a witness;

5. Trafficking in or manufacturing illegal drugs;

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

7. Maiming;

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

9. Rape in the second degree; or

10. Use of a firearm while in commission of a felony,

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

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

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

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

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

mailed warrant and copy of the information on the accused person is returned for any reason other than refusal of the addressee to accept delivery, after a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of a custodial parent, guardian or next friend has been conducted, the court may order that notice of the hearing be given by publication one time in a newspaper of general circulation in the county. In addition, the court may order other means of service of notice that the court deems advisable or in the interests of justice.

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

E. The court shall commence a preliminary hearing within ninety (90) days of the filing of the information pursuant to Section 258 of Title 22 of the Oklahoma Statutes, to determine whether the crime was committed and whether there is probable cause to believe the accused person committed the crime. If the preliminary hearing is not commenced within ninety (90) days, the state shall be prohibited from seeking an adult sentence unless the ninety-day requirement is waived by the defendant. If the whereabouts of the accused are unknown at the time of the filing of the information or if the accused is a fugitive, the State of Oklahoma shall make reasonable efforts to locate the accused in order to commence the proceedings.

An accused who flees the jurisdiction of the court or purposely avoids apprehension for the charges, waives the right to have the preliminary hearing commenced within ninety (90) days of the filing of the information. An accused who fails to cooperate with providing information in locating the accused parent, guardian, or next friend for purpose of notice waives the right to have the preliminary hearing commence within ninety (90) days of the filing of the information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed the Senate the 10th day of March, 2015.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2015.

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Presiding Officer of the House
of Representatives