STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 1233 By: Griffin

AS INTRODUCED

An Act relating to youthful offenders; amending 10A O.S. 2011, Sections 2-5-204, 2-5-205, 2-5-206, 2-5-207, 2-5-208 and 2-5-209, which relate to treatment, certification, applicability and sentencing; requiring confidentiality of certain records; providing exceptions; authorizing release of certain records under specified circumstances; increasing maximum age for certain offender status; granting jurisdiction over certain offenders; repealing 10A O.S. 2011, Section 2-5-101, which relates to juveniles of certain ages to be considered adults for certain offenses committed; and providing an effective date.

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

SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-5-204, is amended to read as follows:

Section 2-5-204. A. A child who is arrested for an offense pursuant to subsection A or B of Section 2-5-206 of this title, or who is certified as a youthful offender pursuant to Section 2-5-205 of this title, shall be charged by information in the same manner as provided for adults.

B. If the child is not otherwise represented by counsel and requests an attorney prior to or during interrogation, or whenever charged by information, as provided in subsection A of this section, the court shall appoint an attorney, who shall not be a district attorney, for the child regardless of any attempted waiver by the parent, legal guardian, or other legal custodian of the child of the right of the child to be represented by counsel. Counsel shall be appointed by the court only upon determination by the court that the parent, legal guardian or legal custodian is found to be indigent.

C. When a person is certified to stand trial as an adult or a youthful offender as provided by the Youthful Offender Act, the accused person shall have all the statutory and constitutional rights and protections of an adult accused of a crime. All proceedings shall be as for a criminal action and the provisions of Title 22 of the Oklahoma Statutes shall apply, except as provided for in the Youthful Offender Act.

D. All youthful offender court records ~~for such a person~~ shall be confidential unless:

1. The motion to impose an adult sentence is granted by the court pursuant to subsection D of Section 2-5-208 of this title;

2. The court sentences the person as an adult pursuant to paragraphs 1 or 3 of subsection B of Section 2-5-208 of this title; or

3. The motion to transfer the person to the custody or supervision of the Department of Corrections is granted pursuant to paragraph 5 of subsection B of Section 2-5-210 of this title.

The records shall be considered adult records and shall not be subject to the provisions of Chapter 6 of the Oklahoma Juvenile Code.

~~D.~~ E. Proceedings against a youthful offender shall be heard by any judge of the district court.

~~E.~~ F. Upon arrest and detention of a person subject to the provisions of Section 2-5-205 or 2-5-206 of this title, the person has the same right to be released on bail as would an adult in the same circumstances and, if detained, may be detained in a county jail if separated by sight and sound from the adult population as otherwise authorized by law. If no such county jail is available, then such person may be detained at a juvenile detention facility. The sheriff, chief of police, or juvenile or adult detention facility operator shall forthwith notify the Office of Juvenile Affairs of any such arrest and detention.

~~F.~~ G. Upon certification for the imposition of an adult sentence, a verdict of guilty or entry of a plea of guilty or nolo contendere by a youthful offender who has been certified for the imposition of an adult sentence as provided by Section 2—5-208 of this title, the person may be detained as an adult and, if incarcerated, may be incarcerated with the adult population.

~~G.~~ H. A child or youthful offender shall be tried as an adult in all subsequent criminal prosecutions, and shall not be subject to the jurisdiction of the juvenile court as a juvenile delinquent or youthful offender processes in any further proceedings if:

1. The child or youthful offender has been certified to stand trial as an adult pursuant to any certification procedure provided by law and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentence has been deferred; or

2. The youthful offender has been certified for the imposition of an adult sentence as provided by Section 2-5-208 of this title and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred.

~~H.~~ I. Except as otherwise provided in the Youthful Offender Act, a person who has been certified as a youthful offender shall be prosecuted as a youthful offender in all subsequent criminal proceedings until the youthful offender has attained eighteen (18) years of age.

All proceedings for the commission of a crime committed after a youthful offender has reached eighteen (18) years of age shall be adult proceedings.

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

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

B. Any person fifteen (15), sixteen (16) or seventeen (17) years of age who is charged with murder in the first degree at that time shall be held accountable for his or her act as if the person was an adult and shall not be subject to the provisions of the Youthful Offender Act or the provisions of the Juvenile Code for certification as a juvenile. The person shall have all the statutory rights and protections of an adult accused of a crime. All proceedings shall be as for a criminal action and the provisions of Title 22 of the Oklahoma Statutes shall apply. A person having been convicted as an adult pursuant to this paragraph shall be tried as an adult for every subsequent offense.

C. 1. Upon the filing of an adult criminal information against such accused person, 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, to have an attorney present and to make application for certification of such accused person as a youthful

offender to the district court for the purpose of prosecution as a youthful offender.

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

3. When personal service of a custodial parent, guardian or next friend of the accused person cannot be effected, service may be made by certified mail to such person's last-known address, 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 thorough 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.

D. 1. The accused person shall file any motions for certification as a youthful offender or a juvenile before the start of the criminal preliminary hearing. If both a motion for certification as a youthful offender and a motion for certification as a juvenile are filed, they shall both be heard at the same time. No motion for certification as a youthful offender or certification as a juvenile may be filed after the time specified in this subsection. 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. <u>All reports, evaluations, motions, records, exhibits or documents generated, submitted to the court or admitted into evidence during the hearing on the motions for certification as a youthful offender or a juvenile are confidential and shall be filed or admitted under seal, except that such records shall be provided to the Office of Juvenile Affairs. The reports, evaluations, motions, records, exhibits or documents shall be released from under seal by order of the court if the youthful offender is sentenced to the custody or supervision of the</u>

Department of Corrections by the court pursuant to either paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of subsection B of Section 2-5-210 of this title.

2. 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 a crime. If the preliminary hearing is not commenced within ninety (90) days of the date the accused person is charged, the district court shall hold a hearing to determine the reasons for delay utilizing the procedure set out in Section 812.2 of Title 22 of the Oklahoma Statutes, to ensure the preliminary hearing is expedited. 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 parents of the accused, 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.

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

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

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

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

3. 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;

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

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

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

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

The court, in its decision on a motion for certification as a youthful offender or juvenile, 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.

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

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

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

SECTION 3. 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. 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. <u>All reports, evaluations, motions, records, exhibits or documents generated, submitted to the court or admitted into evidence during the hearing on the motion for certification of the accused youthful offender to the juvenile system are confidential and shall be filed or admitted under seal, except that such records shall be provided to the Office of Juvenile Affairs. The reports, evaluations, motions, records, exhibits or documents shall be</u>

released from under seal by order of the court if the youthful offender is sentenced to the custody or supervision of the Department of Corrections by the court pursuant to either paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of subsection B of Section 2-5-210 of this title.

4. 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.~~ 5. 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.~~ 6. 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 4. AMENDATORY 10A O.S. 2011, Section 2-5-207, is amended to read as follows:

Section 2-5-207. It is the intent of the Legislature to fully utilize the Youthful Offender Act as a means to protect the public while rehabilitating and holding youth accountable for serious crimes. The Legislature finds that eligible seventeen-year-olds should have the opportunity to be processed as youthful offenders as provided by law and held accountable through the various provisions of the Youthful Offender Act for custody, institutional placement, supervision, extended jurisdiction within the Office of Juvenile Affairs, and the ability to transfer youthful offenders to the Department of Corrections when incarceration or additional supervision is required beyond the maximum age allowed in the Office of Juvenile Affairs. No older youth should be deemed ineligible or denied consideration as a youthful offender who is otherwise lawfully eligible based upon the age of the youth being seventeen (17) years, but it is the intent of the Legislature that such youthful offender shall not remain in the custody or under the supervision of the Office of Juvenile Affairs beyond the youthful offender's maximum age of ~~eighteen (18) years and five (5) months~~ <u>nineteen (19) years</u>. To deny access to an otherwise eligible older

youth without cause is to circumvent the original intent of the Legislature in creating the Youthful Offender Act.

SECTION 5. AMENDATORY 10A O.S. 2011, Section 2-5-208, is amended to read as follows:

Section 2-5-208. A. Whenever the district attorney believes that there is good cause to believe that a person charged as a youthful offender would not reasonably complete a plan of rehabilitation or the public would not be adequately protected if the person were to be sentenced as a youthful offender, and should receive an adult sentence, the district attorney shall file a motion for consideration of the imposition of the sentence as for an adult if the person is convicted:

1. Not more than thirty (30) days following formal arraignment and such motion will be ruled upon by the trial court; or the district attorney may file the motion to impose adult sentence fourteen (14) days prior to the start of the preliminary hearing and the preliminary hearing magistrate will rule on that motion. The district attorney must elect when to file the motion for adult sentence and if the motion is filed and argued to the magistrate, it cannot again be filed and argued to the trial court after arraignment; or

2. If, prior to that time, the accused person indicates to the court that the accused person wishes to plead guilty or nolo contendere, the court shall grant the state ten (10) days from that

date to file the motion required by this subsection, if requested by the state.

B. Upon the filing of such motion and prior to the trial or before the entry of the plea of guilty or nolo contendere the court shall hold a hearing to determine the matter.

C. 1. The court shall order an investigation to be conducted unless waived by the accused person with approval of the court. Any such investigation required shall be conducted by the Office of Juvenile Affairs. All reports, evaluations, motions, records, exhibits or documents generated, submitted to the court or admitted into evidence during the hearing on the motions for certification as a youthful offender or a juvenile are confidential and shall be filed or admitted under seal, except that such records shall be provided to the Office of Juvenile Affairs. The reports, evaluations, motions, records, exhibits or documents shall be released from under seal by order of the court if the youthful offender is sentenced to the custody or supervision of the Department of Corrections by the court pursuant to either paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of subsection B of Section 2-5-210 of this title.

2. At the hearing the court shall consider, with the greatest weight given to subparagraphs a, b and c:

a. whether the 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 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 capability of distinguishing right from wrong as determined by consideration of the psychological evaluation, home, environmental situation, emotional attitude and pattern of living of the accused person,

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 person 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 on escape status from an institution for youthful offenders or delinquent children.

D. After the hearing and consideration of the report of the investigation, the court shall certify the person as eligible for the imposition of an adult sentence only if it finds by clear and convincing evidence that there is good cause to believe that the accused person would not reasonably complete a plan of rehabilitation or that the public would not be adequately protected if the person were to be sentenced as a youthful offender.

In its decision on the motion of the state for imposition of an adult sentence, the court shall detail findings of fact and conclusions of law to each of the considerations in subsection C of this section and shall state that the court has considered each of its guidelines in reaching its decision.

E. An order certifying or denying certification for imposition of an adult sentence shall be a final order, appealable when entered.

F. If the person has been certified as eligible to be sentenced as an adult, the court shall, upon a verdict of guilty or the entry of a plea of guilty or nolo contendere, impose sentence as provided by law for an adult for punishment of the offense committed, subject to the power and authority of the court to suspend or delay sentence, defer judgment, or otherwise structure, limit, or modify sentence as provided in Title 22 of the Oklahoma Statutes or the Youthful Offender Act. When sentence is imposed pursuant to this subsection, the person shall be treated as an adult for purposes of

supervision, incarceration and in all subsequent criminal proceedings.

G. Upon a verdict of guilty or a plea of guilty or nolo contendere, the court may order the person to pay a fee to the Office of Juvenile Affairs of not less than Twenty-five Dollars ($25.00), nor more than Five Hundred Dollars ($500.00), for the presentence investigation. In hardship cases, the court may waive the fee or set the amount of the fee and establish a payment schedule.

SECTION 6. AMENDATORY 10A O.S. 2011, Section 2-5-209, is amended to read as follows:

Section 2-5-209. A. Upon a verdict of guilty or a plea of guilty or nolo contendere of a youthful offender and prior to the imposition of a youthful offender sentence by the court:

1. A youthful offender presentence investigation shall be conducted unless waived by the youthful offender with approval of the court or unless an investigation is conducted pursuant to subsection C of Section 2-5-208 of this title. <u>All reports, evaluations, motions, records, exhibits or documents generated, submitted to the court or admitted into evidence during the hearing on the motion for certification of the accused youthful offender to the juvenile system are confidential and shall be filed or admitted under seal, except that such records shall be provided to the Office of Juvenile Affairs. The reports, evaluations, motions, records,</u>

exhibits or documents shall be released from under seal by order of the court if the youthful offender is sentenced to the custody or supervision of the Department of Corrections by the court pursuant to paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of subsection B of Section 2-5-210 of this title. Any presentence investigation required by this section shall be conducted by the Office of Juvenile Affairs; and

2. The court shall conduct a hearing and shall consider, with the greatest weight given to subparagraphs a, b and c:

a. whether the 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 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 person and the capability of distinguishing right from wrong as determined by consideration of the psychological evaluation, home, environmental situation, emotional attitude and pattern of living of the person,

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

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

g. whether the offense occurred while the person was escaping or on escape status from an institution for youthful offenders or delinquent children.

B. 1. After the hearing and consideration of the report of the presentence investigation, the court shall impose sentence as a youthful offender, and such youthful offender shall be subject to the same type of sentencing procedures and duration of sentence, except for capital offenses, including suspension or deferment, as an adult convicted of a felony offense, except that any sentence imposed upon the youthful offender shall be served in the custody or under the supervision of the Office of Juvenile Affairs until the expiration of the sentence, the youthful offender is discharged, or the youthful offender reaches eighteen (18) years of age, whichever first occurs. If an individual sentenced as a youthful offender attains eighteen (18) years of age prior to the expiration of the sentence, such individual shall be returned to the sentencing court.

At that time, the sentencing court shall make one of the following determinations:

a. whether the youthful offender shall be returned to the Office of Juvenile Affairs to complete a treatment program, provided that the treatment program shall not exceed the youthful offender's attainment of ~~eighteen (18)~~ nineteen (19) years of age ~~and five (5) months~~. At the conclusion of the treatment program, the individual shall be returned to the sentencing court for a determination under subparagraph b, c or d of this paragraph,

b. whether the youthful offender shall be placed in the custody of the Department of Corrections,

c. whether the youthful offender shall be placed on probation with the Department of Corrections, or

d. whether the youthful offender shall be discharged from custody.

2. The sentence imposed shall not exceed the maximum sentence already imposed in the originating sentence.

3. If ~~a~~ the court has extended jurisdiction of the youthful offender ~~has attained eighteen (18) years of age but less than eighteen (18) years of age and five (5) months prior to sentencing, that individual shall be returned to the sentencing court upon attaining the age of eighteen (18) years and five (5) months if that~~

~~individual has been sentenced to a period of placement or treatment with the Office of Juvenile Affairs~~ until nineteen (19) years of age, the youthful offender shall remain in custody or under the supervision of the Office of Juvenile Affairs until the youthful offender has been discharged or sentenced by the court or until the youthful offender's nineteenth birthday, at which time the youthful offender shall be returned to the court for final disposition of the youthful offender's case. The court shall have the same dispositional options as provided in subparagraphs b, c and d of paragraph 1 of this subsection.

4. Any period of probation required by the sentencing court to be served shall be supervised by:

a. the Office of Juvenile Affairs or designated representative, if the youthful offender is under eighteen (18) years of age, or

b. the Department of Corrections or designated representative, upon the youthful offender attaining eighteen (18) years of age.

5. In addition to or in lieu of the placement of the youthful offender in the custody of or under the supervision of the Office of Juvenile Affairs, the court may issue orders with regard to the youthful offender as provided by law for the disposition of an adjudicated juvenile delinquent as long as the age of the youthful

offender does not exceed ~~eighteen (18)~~ nineteen (19) years ~~and five (5) months~~.

6. It is the intent of the Oklahoma Legislature that youthful offenders be held insofar as is practical separate from the juvenile delinquent population.

7. The Office of Juvenile Affairs may make recommendations to the court concerning the disposition of the youthful offender.

C. A youthful offender who is seventeen (17) or eighteen (18) years of age or older and who has been sentenced to the custody of the Office of Juvenile Affairs may be detained in a county jail pending placement in an Office of Juvenile Affairs facility, provided the county jail meets the jail standards promulgated by the State Department of Health for juvenile offenders. Said youthful offender who is eighteen (18) years of age or older may be held in the general population of the county jail.

SECTION 7. REPEALER 10A O.S. 2011, Section 2-5-101, is hereby repealed.

SECTION 8. This act shall become effective November 1, 2016.

55-2-2612 TEK 2/18/2016 6:53:21 PM