

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 224, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Griffin

Griffin-TEK-FS-Req#3531
3/13/2018 5:51 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

FLOOR SUBSTITUTE
FOR

SENATE BILL NO. 224

By: Griffin of the Senate

and

Kannady of the House

FLOOR SUBSTITUTE

An Act relating to youthful offenders; amending 10A O.S. 2011, Sections 2-2-301, as amended by Section 9, Chapter 404, O.S.L. 2013, 2-2-501, as last amended by Section 1, Chapter 362, O.S.L. 2014, 2-5-204, 2-5-205, 2-5-206, 2-5-207, 2-5-208 and 2-5-209 (10A O.S. Supp. 2017, Sections 2-2-301 and 2-2-501) which relate to court proceedings, certification, applicability and sentencing; requiring appointment of an attorney under certain circumstances; applying certain procedural requirements for attorney of child; requiring confidentiality of certain records; providing exceptions; authorizing release of certain records under specified circumstances; modifying time limitations for preliminary hearing under certain circumstances; increasing maximum age for certain offender status; clarifying applicability of certain fee; granting jurisdiction over certain offenders; specifying certain orders as appealable; repealing 10A O.S. 2011, Section 2-5-101, which relates to juveniles of certain ages to be considered adults for certain offenses committed; updating language; and providing an effective date.

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

1 SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-2-301, as
2 amended by Section 9, Chapter 404, O.S.L. 2013 (10A O.S. Supp. 2017,
3 Section 2-2-301), is amended to read as follows:

4 Section 2-2-301. A. No information gained by a custodial
5 interrogation of a youthful offender under sixteen (16) years of age
6 or a child nor any evidence subsequently obtained as a result of
7 such interrogation shall be admissible into evidence against the
8 youthful offender or child unless the custodial interrogation about
9 any alleged offense by any law enforcement officer or investigative
10 agency, or employee of the court, or employee of the Office of
11 Juvenile Affairs is done in the presence of the parents, guardian,
12 attorney, adult relative, adult caretaker, or legal custodian of the
13 youthful offender or child. No such custodial interrogation shall
14 commence until the youthful offender or child and the parents,
15 guardian, attorney, adult relative, adult caretaker, or legal
16 custodian of the youthful offender or child have been fully advised
17 of the constitutional and legal rights of the youthful offender or
18 child, including the right to be represented by counsel at every
19 stage of the proceedings, and the right to have counsel appointed by
20 the court if the parties are without sufficient financial means;
21 provided, however, that no legal aid or other public or charitable
22 legal service shall make claim for compensation as contemplated
23 herein. It is further provided that where private counsel is
24 appointed in such cases, the court shall set reasonable compensation

1 and order the payment out of the court fund. As used in this
2 section, "custodial interrogation" means questioning of a youthful
3 offender under sixteen (16) years of age or child while that
4 youthful offender or child is in law enforcement custody or while
5 that youthful offender or child is being deprived of freedom of
6 action in any significant way by a law enforcement officer, employee
7 of the court, or employee of the Office. Custodial interrogation
8 shall conform with all requirements for interrogation of adult
9 criminal offenders. The term "custodial interrogation" shall not be
10 deemed to mean questioning of a youthful offender or child by a
11 public school administrator or teacher, so long as such questioning
12 is not being conducted on behalf of a law enforcement officer, an
13 employee of the court or an employee of the Office. Any information
14 gained from noncustodial questioning of a child or youthful offender
15 by a public school administrator or teacher concerning a wrongful
16 act committed on public school property shall be admissible into
17 evidence against the youthful offender or child.

18 B. A custodial interrogation of a youthful offender over
19 sixteen (16) years of age shall conform with all the requirements
20 for the interrogation of an adult.

21 C. If the youthful offender or child is not otherwise
22 represented by counsel, whenever a petition is filed pursuant to the
23 provisions of Section 2-2-104 or Section 2-5-201 et seq. of this
24 title, the court shall appoint an attorney, who shall not be a

1 district attorney, for the youthful offender or child regardless of
2 any attempted waiver by the parent or other legal custodian of the
3 youthful offender or child of the right of the youthful offender or
4 child to be represented by counsel. The youthful offender or child
5 shall be represented by counsel at every hearing or review through
6 completion or dismissal of the case. Counsel shall be appointed by
7 the court only upon determination by the court that the parent,
8 legal guardian or legal custodian is found to be indigent. If
9 indigency is established, the Oklahoma Indigent Defense System shall
10 represent the child in accordance with Section 1355.6 of Title 22 of
11 the Oklahoma Statutes or the applicable office of the county
12 indigent defender shall represent the child in accordance with
13 Section 138.5 of Title 19 of the Oklahoma Statutes. Provided, if
14 the parent or legal guardian of a child is not indigent but refuses
15 to employ counsel, the court shall appoint counsel to represent the
16 child at detention hearings until counsel is provided. Costs of
17 representation shall be imposed on the parent or other legal
18 custodian as provided by Section 138.10 of Title 19 of the Oklahoma
19 Statutes. Thereafter, the court shall not appoint counsel for a
20 child with a nonindigent parent or legal custodian and shall order
21 the parent or legal custodian to obtain counsel. A parent or legal
22 custodian of an indigent child who has been ordered to obtain
23 counsel for the child and who willfully fails to follow the court
24 order shall be found in indirect contempt of court.

1 D. In all cases of juvenile delinquency, adult certification,
2 reverse certification, or youthful offender proceedings and appeals,
3 or any other proceedings and appeals pursuant to the Oklahoma
4 Juvenile Code, except mental health or in-need-of-supervision
5 proceedings and appeals, and any other juvenile proceedings that are
6 civil in nature, and other than in counties where the office of the
7 county indigent defender is appointed, the Oklahoma Indigent Defense
8 System shall be appointed to represent indigent juveniles as
9 provided for in the Indigent Defense Act. In all other cases
10 pursuant to this title, including juvenile proceedings that are
11 civil in nature, juvenile mental health or in-need-of-supervision
12 proceedings and appeals, with the exception of proceedings in
13 counties where the office of the county indigent defender is
14 appointed, the court shall, if counsel is appointed and assigned,
15 allow and direct to be paid from the local court fund a reasonable
16 and just compensation to the attorney or attorneys for such services
17 as they may render; provided, that any attorney appointed pursuant
18 to this subsection shall not be paid a sum in excess of One Hundred
19 Dollars (\$100.00) for services rendered in preliminary proceedings,
20 Five Hundred Dollars (\$500.00) for services rendered during trial,
21 and One Hundred Dollars (\$100.00) for services rendered at each
22 subsequent post-disposition hearing.

23 E. Counsel for the child shall advise the child and advocate
24 the expressed wishes of the child, as much as reasonably possible,

1 under the same ethical obligations as if the client were an adult.
2 Upon motion by the state, the child, the attorney for the child, or
3 a parent or legal custodian of the child, the court shall appoint a
4 guardian ad litem.

5 F. The guardian ad litem shall not be a district attorney, an
6 employee of the office of the district attorney, an employee of the
7 court, an employee of a juvenile bureau, or an employee of any
8 public agency having duties or responsibilities towards the child.
9 The guardian ad litem shall be given access to the court file and
10 access to all records and reports relevant to the case and to any
11 records and reports of examination of the child's parent or other
12 custodian, made pursuant to this section or Section 1-2-101 of this
13 title. Provided, nothing in this subsection shall obligate counsel
14 for the child to breach attorney-client confidentiality with the
15 child.

16 SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-2-501, as
17 last amended by Section 1, Chapter 362, O.S.L. 2014 (10A O.S. Supp.
18 2017, Section 2-2-501), is amended to read as follows:

19 Section 2-2-501. A. No later than forty (40) days after making
20 an order of adjudication, the court shall hold a dispositional
21 hearing, at which all evidence helpful in determining the proper
22 disposition best serving the interest of the child and the public,
23 including but not limited to oral and written reports, may be
24 admitted and may be relied upon to the extent of its probative

1 value, even though not competent for the purposes of the
2 adjudicatory hearing.

3 B. Before making an order of disposition, the court shall
4 advise the district attorney, the attorney of the child, the
5 parents, guardian, custodian or responsible relative, and their
6 counsel, of the factual contents and the conclusion of reports
7 prepared for the use of the court and considered by it, and afford
8 fair opportunity, if requested, to controvert them. An order of
9 disposition shall include a specific finding and order of the court
10 relative to the liability and accountability of the parents for the
11 care and maintenance of the child as authorized by Section 2-2-703
12 of this title, unless custody is placed with the parent or parents
13 of the child.

14 C. On its own motion or that of the district attorney, the
15 attorney of the child or of the parent, guardian, custodian,
16 responsible relative or counsel, the court may adjourn the hearing
17 for a reasonable period to receive reports or other evidence and, in
18 such event, shall make an appropriate order for detention of the
19 child, or release of the child from detention subject to supervision
20 by the court, during the period of the continuance.

21 D. In scheduling investigations and hearings, the court shall
22 give priority to proceedings in which a child is in detention, or
23 has otherwise been removed from his home, before an order of
24 disposition has been made.

SECTION 3. 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.

1 D. All youthful offender court records for ~~such~~ a person who is
2 certified to stand trial as an adult or youthful offender shall be
3 considered adult records and shall not be subject to the provisions
4 of Chapter 6 of the Oklahoma Juvenile Code; provided, however, all
5 reports, evaluations, motions, records, exhibits or documents that
6 are submitted to the court or admitted into evidence during the
7 hearing on the motion for certification as a youthful offender to
8 the juvenile system or motion for imposition of an adult sentence
9 shall be confidential and shall be filed or admitted under seal,
10 except that such records shall be provided to the Office of Juvenile
11 Affairs. All reports, evaluations, motions, records, exhibits or
12 documents shall be released from under seal by order of the court if
13 the youthful offender is sentenced to the custody or supervision of
14 the Department of Corrections by the court pursuant to paragraph 1
15 of subsection B of Section 2-5-209 or paragraph 5 of subsection B of
16 Section 2-5-210 of this title.

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

19 ~~E.~~ F. Upon arrest and detention of a person subject to the
20 provisions of Section 2-5-205 or 2-5-206 of this title, the person
21 has the same right to be released on bail as would an adult in the
22 same circumstances and, if detained, may be detained in a county
23 jail if separated by sight and sound from the adult population as
24 otherwise authorized by law. If no such county jail is available,

1 then such person may be detained at a juvenile detention facility.
2 The sheriff, chief of police, or juvenile or adult detention
3 facility operator shall forthwith notify the Office of Juvenile
4 Affairs of any such arrest and detention.

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

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

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

20 2. The youthful offender has been certified for the imposition
21 of an adult sentence as provided by Section 2-5-208 of this title
22 and is subsequently convicted of the alleged offense or against whom
23 the imposition of judgment and sentencing has been deferred.
24

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

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

9 SECTION 4. AMENDATORY 10A O.S. 2011, Section 2-5-205, is
10 amended to read as follows:

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

18 B. Any person fifteen (15), sixteen (16) or seventeen (17)
19 years of age who is charged with murder in the first degree at that
20 time shall be held accountable for his or her act as if the person
21 was an adult and shall not be subject to the provisions of the
22 Youthful Offender Act or the provisions of the Juvenile Code for
23 certification as a juvenile. The person shall have all the
24 statutory rights and protections of an adult accused of a crime.

1 All proceedings shall be as for a criminal action and the provisions
2 of Title 22 of the Oklahoma Statutes shall apply. A person having
3 been convicted as an adult pursuant to this paragraph shall be tried
4 as an adult for every subsequent offense.

5 C. 1. Upon the filing of an adult criminal information against
6 such accused person, a warrant shall be issued which shall set forth
7 the rights of the accused person, and the rights of the parents,
8 guardian or next friend of the accused person to be present at the
9 preliminary hearing, to have an attorney present and to make
10 application for certification of such accused person as a youthful
11 offender to the district court for the purpose of prosecution as a
12 youthful offender.

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

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

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

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

17 D. 1. The accused person shall file any motions for
18 certification as a youthful offender or a juvenile before the start
19 of the criminal preliminary hearing. If both a motion for
20 certification as a youthful offender and a motion for certification
21 as a juvenile are filed, they shall both be heard at the same time.
22 No motion for certification as a youthful offender or certification
23 as a juvenile may be filed after the time specified in this
24 subsection. Upon the filing of such motion, the complete juvenile

1 record of the accused shall be made available to the district
2 attorney and the accused person. All reports, evaluations, motions,
3 records, exhibits or documents that are submitted to the court or
4 admitted into evidence during the hearing on the motion for
5 certification as a youthful offender to the juvenile system or
6 motion for imposition of an adult sentence are confidential and
7 shall be filed or admitted under seal, except that such records
8 shall be provided to the Office of Juvenile Affairs. The reports,
9 evaluations, motions, records, exhibits or documents shall be
10 released from under seal by order of the court if the youthful
11 offender is sentenced to the custody or supervision of the
12 Department of Corrections by the court pursuant to either paragraph
13 1 of subsection B of Section 2-5-209 or paragraph 5 of subsection B
14 of Section 2-5-210 of this title.

15 2. The court shall commence a preliminary hearing within ninety
16 (90) days of the filing of the information, pursuant to Section 258
17 of Title 22 of the Oklahoma Statutes, to determine whether the crime
18 was committed and whether there is probable cause to believe the
19 accused person committed a crime. If the preliminary hearing is not
20 commenced within ninety (90) days of the date the accused person is
21 charged, the district court shall hold a hearing to determine the
22 reasons for delay utilizing the procedure set out in Section 812.2
23 of Title 22 of the Oklahoma Statutes, to ensure the preliminary
24 hearing is expedited. If the whereabouts of the accused are unknown

1 at the time of the filing of the information or if the accused is a
2 fugitive, the State of Oklahoma shall make reasonable efforts to
3 locate the accused in order to commence the proceedings. An accused
4 who flees the jurisdiction of the court or purposely avoids
5 apprehension for the charges, waives the right to have the
6 preliminary hearing commenced within ninety (90) days of the filing
7 of the information. An accused who fails to cooperate with
8 providing information in locating the parents of the accused,
9 guardian, or next friend for purpose of notice waives the right to
10 have the preliminary hearing commence within ninety (90) days of the
11 filing of the information. However, if an accused who was absent
12 for ninety (90) days after the filing of the information is detained
13 in a juvenile detention center or county jail within this state, or
14 his or her location becomes known to the state at any time after the
15 first ninety (90) days have expired, the preliminary hearing shall
16 commence within ninety (90) days of the notice of the location.

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

21 E. The court shall rule on any motions for certification as a
22 youthful offender or an alleged juvenile delinquent before ruling on
23 whether to bind the accused over for trial. When ruling on a motion
24 for certification as a youthful offender or juvenile, the court

1 shall give consideration to the following guidelines with greatest
2 weight to be given to paragraphs 1, 2 and 3:

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

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

7 3. The record and past history of the accused person, including
8 previous contacts with law enforcement agencies and juvenile or
9 criminal courts, prior periods of probation and commitments to
10 juvenile institutions;

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

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

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

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

1 The court, in its decision on a motion for certification as a
2 youthful offender or juvenile, shall detail findings of fact and
3 conclusions of law to each of the above considerations, and shall
4 state that the court has considered each of the guidelines in
5 reaching its decision.

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

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

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

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

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

- 23 1. Murder in the second degree;
- 24 2. Kidnapping;

1 3. Manslaughter in the first degree;

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

4 5. Robbery in the first degree or attempt thereof;

5 6. Rape in the first degree or attempt thereof;

6 7. Rape by instrumentation or attempt thereof;

7 8. Forcible sodomy;

8 9. Lewd molestation;

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

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

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

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

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

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

21 4. Intimidating a witness;

22 5. Trafficking in or manufacturing illegal drugs;

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

24 7. Maiming;

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

5 9. Rape in the second degree; or

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

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

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

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

22 3. When personal service of a custodial parent, guardian or
23 next friend of the alleged youthful offender cannot be effected,
24 service may be made by certified mail to the last-known address of

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

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

20 E. The court shall commence a preliminary hearing within ninety
21 (90) days of the filing of the information pursuant to Section 258
22 of Title 22 of the Oklahoma Statutes, to determine whether the crime
23 was committed and whether there is probable cause to believe the
24 accused person committed the crime. If the preliminary hearing is

1 not commenced within ninety (90) days, the state shall be prohibited
2 from seeking an adult sentence unless the ninety-day requirement is
3 waived by the defendant. If the whereabouts of the accused are
4 unknown at the time of the filing of the information or if the
5 accused is a fugitive, the State of Oklahoma shall make reasonable
6 efforts to locate the accused in order to commence the proceedings.
7 An accused who flees the jurisdiction of the court or purposely
8 avoids apprehension for the charges, waives the right to have the
9 preliminary hearing commenced within ninety (90) days of the filing
10 of the information. However, if an accused who was absent for
11 ninety (90) days after the filing of the information is detained in
12 a juvenile detention center or county jail within this state, or his
13 or her location becomes known to the state at any time after the
14 first ninety (90) days have expired, the preliminary hearing shall
15 commence within ninety (90) days of the notice of the location. An
16 accused who fails to cooperate with providing information in
17 locating the accused parent, guardian, or next friend for purpose of
18 notice waives the right to have the preliminary hearing commence
19 within ninety (90) days of the filing of the information.

20 F. 1. The accused person may file a motion for certification
21 to the juvenile justice system before the start of the criminal
22 preliminary hearing:
23
24

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

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

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

13 3. All reports, evaluations, motions, records, exhibits or
14 documents that are submitted to the court or admitted into evidence
15 during the hearing on the motion for certification of the accused
16 youthful offender to the juvenile system or motion for imposition of
17 an adult sentence are confidential and shall be filed or admitted
18 under seal, except that such records shall be provided to the Office
19 of Juvenile Affairs. The reports, evaluations, motions, records,
20 exhibits or documents shall be released from under seal by order of
21 the court if the youthful offender is sentenced to the custody or
22 supervision of the Department of Corrections by the court pursuant
23 to either paragraph 1 of subsection B of Section 2-5-209 or
24 paragraph 5 of subsection B of Section 2-5-210 of this title.

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

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

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

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

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

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

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

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

10 ~~4.~~ 5. In its decision on the motion for certification as an
11 alleged juvenile delinquent, the court shall detail findings of fact
12 and conclusions of law to each of the above considerations and shall
13 state that the court has considered each of the guidelines in
14 reaching its decision.

15 ~~5.~~ 6. An order certifying a person or denying such
16 certification to the juvenile justice system shall be a final order,
17 appealable when entered.

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

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

1 Section 2-5-207. It is the intent of the Legislature to fully
2 utilize the Youthful Offender Act as a means to protect the public
3 while rehabilitating and holding youth accountable for serious
4 crimes. The Legislature finds that eligible seventeen-year-olds
5 should have the opportunity to be processed as youthful offenders as
6 provided by law and held accountable through the various provisions
7 of the Youthful Offender Act for custody, institutional placement,
8 supervision, extended jurisdiction within the Office of Juvenile
9 Affairs, and the ability to transfer youthful offenders to the
10 Department of Corrections when incarceration or additional
11 supervision is required beyond the maximum age allowed in the Office
12 of Juvenile Affairs. No older youth should be deemed ineligible or
13 denied consideration as a youthful offender who is otherwise
14 lawfully eligible based upon the age of the youth being seventeen
15 (17) years, but it is the intent of the Legislature that such
16 youthful offender shall not remain in the custody or under the
17 supervision of the Office of Juvenile Affairs beyond the youthful
18 offender's maximum age of eighteen (18) years and ~~five (5)~~ six (6)
19 months or until nineteen (19) years if jurisdiction has been
20 extended as provided in subsection B of Section 2-5-209 of this
21 title. To deny access to an otherwise eligible older youth without
22 cause is to circumvent the original intent of the Legislature in
23 creating the Youthful Offender Act.

1 SECTION 7. AMENDATORY 10A O.S. 2011, Section 2-5-208, is
2 amended to read as follows:

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

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

20 2. If, prior to that time, the accused person indicates to the
21 court that the accused person wishes to plead guilty or nolo
22 contendere, the court shall grant the state ten (10) days from that
23 date to file the motion required by this subsection, if requested by
24 the state.

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

4 C. 1. The court shall order an investigation to be conducted
5 unless waived by the accused person with approval of the court. Any
6 such investigation required shall be conducted by the Office of
7 Juvenile Affairs. All reports, evaluations, motions, records,
8 exhibits or documents that are submitted to the court or admitted
9 into evidence during the hearing on the motion for certification as
10 a youthful offender to the juvenile system or the motion for
11 imposition of an adult sentence are confidential and shall be filed
12 or admitted under seal, except that such records shall be provided
13 to the Office of Juvenile Affairs. The reports, evaluations,
14 motions, records, exhibits or documents shall be released from under
15 seal by order of the court if the youthful offender is sentenced to
16 the custody or supervision of the Department of Corrections by the
17 court pursuant to either paragraph 1 of subsection B of Section 2-5-
18 209 or paragraph 5 of subsection B of Section 2-5-210 of this title.

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

- 21 a. whether the offense was committed in an aggressive,
22 violent, premeditated or willful manner,
23 b. whether the offense was against persons and, if
24 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

1 convincing evidence that there is good cause to believe that the
2 accused person would not reasonably complete a plan of
3 rehabilitation or that the public would not be adequately protected
4 if the person were to be sentenced as a youthful offender.

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

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

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

1 G. Upon a verdict of guilty or a plea of guilty or nolo
2 contendere, the court may order the person to pay a fee to the
3 Office of Juvenile Affairs of not less than Twenty-five Dollars
4 (\$25.00), nor more than Five Hundred Dollars (\$500.00), for the
5 presentence or certification investigation. In hardship cases, the
6 court may waive the fee or set the amount of the fee and establish a
7 payment schedule.

8 SECTION 8. AMENDATORY 10A O.S. 2011, Section 2-5-209, is
9 amended to read as follows:

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

13 1. A youthful offender presentence investigation shall be
14 conducted unless waived by the youthful offender with approval of
15 the court or unless an investigation is conducted pursuant to
16 subsection C of Section 2-5-208 of this title. All reports,
17 evaluations, motions, records, exhibits or documents that are
18 submitted to the court or admitted into evidence during the hearing
19 on the motion for certification of the accused youthful offender to
20 the juvenile system or motion for imposition of an adult sentence
21 are confidential and shall be filed or admitted under seal, except
22 that such records shall be provided to the Office of Juvenile
23 Affairs. The reports, evaluations, motions, records, exhibits or
24 documents shall be released from under seal by order of the court if

1 the youthful offender is sentenced to the custody or supervision of
2 the Department of Corrections by the court pursuant to paragraph 1
3 of subsection B of Section 2-5-209 or paragraph 5 of subsection B of
4 Section 2-5-210 of this title. Any presentence investigation
5 required by this section shall be conducted by the Office of
6 Juvenile Affairs; and

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

- 9 a. whether the offense was committed in an aggressive,
10 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 person, including
15 previous contacts with law enforcement agencies and
16 juvenile or criminal courts, prior periods of
17 probation and commitments to juvenile institutions,
- 18 d. the sophistication and maturity of the person and the
19 capability of distinguishing right from wrong as
20 determined by consideration of the psychological
21 evaluation, home, environmental situation, emotional
22 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.

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

- 3 a. whether the youthful offender shall be returned to the
4 Office of Juvenile Affairs to complete a treatment
5 program, provided that the treatment program shall not
6 exceed the youthful offender's attainment of eighteen
7 (18) years of age and ~~five (5)~~ six (6) months. At the
8 conclusion of the treatment program, the individual
9 shall be returned to the sentencing court for a
10 determination under subparagraph b, c or d of this
11 paragraph,
- 12 b. whether the youthful offender shall be placed in the
13 custody of the Department of Corrections,
- 14 c. whether the youthful offender shall be placed on
15 probation with the Department of Corrections, or
- 16 d. whether the youthful offender shall be discharged from
17 custody.

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

20 3. Upon the youthful offender attaining the age of eighteen
21 (18) years and six (6) months, the Office of Juvenile Affairs may
22 recommend that the youthful offender be returned to the custody or
23 supervision of the Office of Juvenile Affairs until the age of
24 nineteen (19) years to complete the reintegration phase of the

1 treatment program or community supervision as determined by the
2 Office of Juvenile Affairs. During any period of extension, a
3 youthful offender may be transferred to the Department of
4 Corrections as provided in paragraph 5 of subsection B of Section 2-
5 5-210 of this title, whether the youthful offender is placed in an
6 out-of-home placement or in the community.

7 4. If a the court has extended jurisdiction of the youthful
8 ~~offender has attained eighteen (18) years of age but less than~~
9 ~~eighteen (18) years of age and five (5) months prior to sentencing,~~
10 ~~that individual shall be returned to the sentencing court upon~~
11 ~~attaining the age of eighteen (18) years and five (5) months if that~~
12 ~~individual has been sentenced to a period of placement or treatment~~
13 ~~with the Office of Juvenile Affairs~~ until nineteen (19) years of
14 age, the youthful offender shall remain in custody or under the
15 supervision of the Office of Juvenile Affairs until the youthful
16 offender has been discharged or sentenced by the court or until the
17 youthful offender's nineteenth birthday, at which time the youthful
18 offender shall be returned to the court for final disposition of the
19 youthful offender's case. The court shall have the same
20 dispositional options as provided in subparagraphs b, c and d of
21 paragraph 1 of this subsection.

22 4. 5. Any period of probation required by the sentencing court
23 to be served shall be supervised by:
24

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

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

7 ~~5.~~ 6. In addition to or in lieu of the placement of the
8 youthful offender in the custody of or under the supervision of the
9 Office of Juvenile Affairs, the court may issue orders with regard
10 to the youthful offender as provided by law for the disposition of
11 an adjudicated juvenile delinquent as long as the age of the
12 youthful offender does not exceed ~~eighteen (18)~~ nineteen (19) years
13 ~~and five (5) months.~~

14 ~~6.~~ 7. It is the intent of the Oklahoma Legislature that
15 youthful offenders be held insofar as is practical separate from the
16 juvenile delinquent population.

17 ~~7.~~ 8. The Office of Juvenile Affairs may make recommendations
18 to the court concerning the disposition of the youthful offender.

19 9. Any order issued by the sentencing court under this
20 subsection shall be a final order, appealable when entered.

21 C. A youthful offender who is seventeen (17) or eighteen (18)
22 years of age or older and who has been sentenced to the custody of
23 the Office of Juvenile Affairs may be detained in a county jail
24 pending placement in an Office of Juvenile Affairs facility,

1 provided the county jail meets the jail standards promulgated by the
2 State Department of Health for juvenile offenders. ~~Said~~ The
3 youthful offender who is eighteen (18) years of age or older may be
4 held in the general population of the county jail.

5 SECTION 9. REPEALER 10A O.S. 2011, Section 2-5-101, is
6 hereby repealed.

7 SECTION 10. This act shall become effective November 1, 2018.
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