

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
3 BILL NO. 2311

By: Lawson and Munson of the
House

4 and

5 Haste of the Senate

6
7
8 An Act relating to children; amending 10A O.S. 2011,
9 Sections 2-2-403, 2-3-101, as last amended by Section
10 1, Chapter 22, O.S.L. 2020, 2-5-204, as amended by
11 Section 4, Chapter 155, O.S.L. 2018 and 2-5-209, as
12 amended by Section 9, Chapter 155, O.S.L. 2018 (10A
13 O.S. Supp. 2020, Sections 2-3-101, 2-5-204 and 2-5-
14 209), which relate to detention of children in adult
15 facilities; providing for incarceration of juveniles
16 sentenced as adults; prohibiting detainment of
children in adult facilities; providing exceptions;
requiring hearing and certain findings before
confinement of child in adult facility; establishing
factors for court to consider; affording certain
rights and protections to child; providing for
detention of youthful offenders; and providing an
effective date.

17 AUTHOR: Add the following House Coauthors: Brewer and Virgin

18
19 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
20 entire bill and insert

21 "An Act relating to the Oklahoma Juvenile Code;
22 amending 10A O.S. 2011, Sections 2-2-403, 2-3-101, as
23 last amended by Section 1, Chapter 22, O.S.L. 2020,
2-5-204, as amended by Section 4, Chapter 155, O.S.L.
2018 and 2-5-209, as amended by Section 9, Chapter
155, O.S.L. 2018 (10A O.S. Supp. 2020, Sections 2-3-
24 101, 2-5-204 and 2-5-209), which relate to detention

1 of children in adult facilities; providing for
2 incarceration of juveniles sentenced as adults;
3 prohibiting detainment of children in adult
4 facilities; providing exceptions; requiring hearing
5 and certain findings before confinement of child in
adult facility; establishing factors for court to
consider; affording certain rights and protections to
child; providing for detention of youthful offenders;
and providing an effective date.

6
7 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

21 Consideration shall be given to:

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

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

5 3. The sophistication and maturity of the juvenile and
6 capability of the juvenile of distinguishing right from wrong as
7 determined by consideration of a psychological evaluation of the
8 juvenile, home, environmental situation, emotional attitude and
9 pattern of living;

10 4. The record and previous history of the accused person,
11 including previous contacts with community agencies, law enforcement
12 agencies, schools, juvenile or criminal courts and other
13 jurisdictions, prior periods of probation or prior commitments to
14 juvenile institutions;

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

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

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

22 After the investigation and hearing, the court may in its
23 discretion proceed with the juvenile proceeding, or it shall state
24 its reasons in writing and shall certify, based on clear and

1 convincing evidence, that the child shall be held accountable for
2 acts of the child as if the child were an adult and shall be held
3 for proper criminal proceedings for the specific offense charged, by
4 any other division of the court which would have trial jurisdiction
5 of the offense if committed by an adult. The juvenile proceeding
6 shall not be dismissed until the criminal proceeding has commenced
7 and if no criminal proceeding commences within thirty (30) days of
8 the date of the certification, unless stayed pending appeal, the
9 court shall proceed with the juvenile proceeding and the
10 certification shall lapse.

11 If not included in the original summons, notice of a hearing to
12 consider whether a child should be certified for trial as an adult
13 shall be given to all persons who are required to be served with a
14 summons at the commencement of a juvenile proceeding, but
15 publication in a newspaper when the address of a person is unknown
16 is not required. The purpose of the hearing shall be clearly stated
17 in the notice.

18 B. Prior to the entry of any order of certification, any child
19 in custody shall have the same right to be released upon bail as
20 would an adult under the same circumstances. Subsequent to the
21 entry of an order that a child stand trial as an adult, the child
22 shall have all the statutory and constitutional rights and
23 protections of an adult accused of a crime ~~but shall, while awaiting~~
24 ~~trial and for the duration of the trial, be detained in a jail cell~~

1 ~~or ward entirely separate from prisoners who are eighteen (18) years~~
2 ~~of age or over.~~ Upon conviction, the juvenile may be incarcerated
3 ~~with the adult population~~ in an adult jail, adult lockup, adult
4 detention facility or other adult facility if that facility is
5 licensed by the State Department of Health to detain children under
6 eighteen (18) years of age while the person is awaiting housing by
7 the Department of Corrections. If, prior to the entry of any order
8 of certification, the child becomes eighteen (18) years of age, the
9 child may be detained in a county jail or released on bail. If a
10 child is certified to stand trial as an adult, the court shall make
11 every effort to avoid duplication of the adult preliminary hearing
12 and the prosecutorial hearing in the juvenile certification process.
13 The parties may jointly stipulate to the court that the record for
14 the prosecutorial merit hearing in the juvenile proceeding be used
15 for all or part of the preliminary hearing.

16 C. Any child who has been certified to stand trial as an adult
17 pursuant to any order entered by any competent court of this state
18 or any other state shall be tried as an adult in all subsequent
19 criminal prosecutions, and shall not be subject to the jurisdiction
20 of the juvenile court or be eligible to be tried as a youthful
21 offender in any further proceedings.

22 D. An order either certifying a person as a child or an adult
23 pursuant to subsection A of this section or denying such
24

1 certification shall be a final order, appealable when entered and
2 shall not be modified.

3 SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-3-101, as
4 last amended by Section 1, Chapter 22, O.S.L. 2020 (10A O.S. Supp.
5 2020, Section 2-3-101), is amended to read as follows:

6 Section 2-3-101. A. When a child is taken into custody
7 pursuant to the provisions of the Oklahoma Juvenile Code, the child
8 shall be detained only if it is necessary to assure the appearance
9 of the child in court or for the protection of the child or the
10 public.

11 1. a. No child twelve (12) years of age or younger shall be
12 placed in a juvenile detention facility unless all
13 alternatives have been exhausted and the child is
14 currently charged with a criminal offense that would
15 constitute a felony if committed by an adult and it
16 has been indicated by a risk-assessment screening that
17 the child requires detention. The detention of any
18 child twelve (12) years of age or younger shall be
19 judicially reviewed pursuant to subparagraph c of this
20 paragraph.

21 b. Any child who is thirteen (13) or fourteen (14) years
22 of age may be admitted to a juvenile detention
23 facility only after all alternatives have been
24 exhausted and the child is currently charged with a

1 criminal offense that would constitute a felony if
2 committed by an adult and it has been indicated by a
3 risk-assessment screening that the child requires
4 detention.

5 c. No preadjudicatory or predisposition detention or
6 custody order shall remain in force and effect for
7 more than thirty (30) days. The court, for good and
8 sufficient cause shown, may extend the effective
9 period of such an order for an additional period not
10 to exceed sixty (60) days. If the child is being
11 detained for the commission of a murder, the court
12 may, if it is in the best interests of justice, extend
13 the effective period of such an order an additional
14 sixty (60) days.

15 d. Whenever the court orders a child to be held in a
16 juvenile detention facility, an order for secure
17 detention shall remain in force and effect for not
18 more than fifteen (15) days after such order. Upon an
19 application of the district attorney and after a
20 hearing on such application, the court, for good and
21 sufficient cause shown, may extend the effective
22 period of such an order for an additional period not
23 to exceed fifteen (15) days after such hearing. The
24 total period of preadjudicatory or predisposition

1 shall not exceed the ninety-day limitation as
2 specified in subparagraph a of this paragraph. The
3 child shall be present at the hearing on the
4 application for extension unless, as authorized and
5 approved by the court, the attorney for the child is
6 present at the hearing and the child is available to
7 participate in the hearing via telephone conference
8 communication. For the purpose of this paragraph,
9 "telephone conference communication" means use of a
10 telephone device that allows all parties, including
11 the child, to hear and be heard by the other parties
12 at the hearing. After the hearing, the court may
13 order continued detention in a juvenile detention
14 center, may order the child detained in an alternative
15 to secure detention or may order the release of the
16 child from detention.

17 2. No child alleged or adjudicated to be deprived or in need of
18 supervision or who is or appears to be a minor in need of treatment
19 as defined by the Inpatient Mental Health and Substance Abuse
20 Treatment of Minors Act, shall be confined in any jail, adult
21 lockup, or adult detention facility. No child shall be transported
22 or detained in association with criminal, vicious, or dissolute
23 persons.
24

1 3. Except as otherwise authorized by this section a child who
2 has been taken into custody as a deprived child, a child in need of
3 supervision, or who appears to be a minor in need of treatment, may
4 not be placed in any detention facility pending court proceedings,
5 but must be placed in shelter care or foster care or, with regard to
6 a child who appears to be a minor in need of treatment, a behavioral
7 health treatment facility in accordance with the provisions of the
8 Inpatient Mental Health and Substance Abuse Treatment of Minors Act,
9 or released to the custody of the parents of the child or some other
10 responsible party. Provided, this shall not preclude runaway
11 juveniles from other states, with or without delinquent status, to
12 be held in a detention facility in accordance with the Interstate
13 Compact for Juveniles in Sections 2-9-101 through 2-9-116 of this
14 title and rules promulgated by the Interstate Commission.

15 B. No child shall be placed in secure detention unless:

16 1. The child is an escapee from any delinquent placement;

17 2. The child is a fugitive from another jurisdiction with a
18 warrant on a delinquency charge or confirmation of delinquency
19 charges by the home jurisdiction;

20 3. The child is seriously assaultive or destructive towards
21 others or self;

22 4. The child is currently charged with any criminal offense
23 that would constitute a felony if committed by an adult or a
24 misdemeanor and:

- a. is on probation or parole on a prior delinquent offense,
- b. is on preadjudicatory community supervision, or
- c. is currently on release status on a prior delinquent offense;

5. The child has willfully failed or there is reason to believe that the child will willfully fail to appear for juvenile court proceedings;

6. A warrant for the child has been issued on the basis that:

- a. the child is absent from court-ordered placement without approval by the court,
- b. the child is absent from designated placement by the Office of Juvenile Affairs without approval by the Office of Juvenile Affairs,
- c. there is reason to believe the child will not remain at said placement, or
- d. the child is subject to an administrative transfer or parole revocation proceeding.

C. A child who has violated a court order and has had the order revoked or modified pursuant to Section 2-2-503 of this title may be placed into an Office-of-Juvenile-Affairs-designated sanction detention bed or an Office-of-Juvenile-Affairs-approved sanction program.

1 D. Priority shall be given to the use of juvenile detention
2 facilities for the detention of juvenile offenders through
3 provisions requiring the removal from detention of a juvenile with a
4 lower priority status if an empty detention bed is not available at
5 the time of referral of a juvenile with a higher priority status and
6 if the juvenile with a higher priority status would be more of a
7 danger to the public than the juvenile with the lower priority
8 status.

9 E. Juvenile detention facilities shall be the initial placement
10 for all persons under eighteen (18) years of age. No child shall be
11 placed in secure detention in an adult jail, adult lockup, adult
12 detention facility or other adult facility except as provided in
13 this section.

14 1. Any child who is at least fifteen (15) years of age who is
15 charged with murder in the first degree may be detained in an adult
16 jail, adult lockup, adult detention facility or other adult facility
17 only after a hearing in which the child is provided representation
18 and the court makes a written finding that it is in the interest of
19 justice that the child be placed in an adult jail, adult lockup,
20 adult detention facility or other adult facility.

21 2. In determining whether it is in the interest of justice that
22 a child who is at least fifteen (15) years of age and who is charged
23 with murder in the first degree be placed in an adult jail, adult
24

1 lockup, adult detention facility or other adult facility, the court
2 shall consider:

- 3 a. the age of the child,
- 4 b. the physical and mental maturity of the child,
- 5 c. the present mental state of the child, including
6 whether the child presents an imminent risk of harm to
7 the child,
- 8 d. the nature and circumstances of the alleged offense,
- 9 e. the child's history of prior delinquent acts,
- 10 f. the relative ability of the available adult and
11 juvenile detention facilities to not only meet the
12 specific needs of the child but also to protect the
13 safety of the public as well as other detained youth,
14 and
- 15 g. any other relevant factors.

16 3. If a court determines that it is in the interest of justice
17 that the child be placed in an adult jail, adult lockup, adult
18 detention facility or other adult facility:

- 19 a. the court shall hold a hearing not less frequently
20 than once every thirty (30) days, or in the case of a
21 rural jurisdiction, which is any jurisdiction not
22 located in a metropolitan statistical area, as defined
23 by the United States Office of Management and Budget,
24 not less frequently than once every forty-five (45)

1 days, to review whether it is still in the interest of
2 justice to permit the juvenile to be so held or have
3 such sight and sound contact, and

4 b. the child shall not be held in any adult jail or
5 lockup for adults or be permitted to have sight or
6 sound contact with adult inmates for more than one
7 hundred eighty (180) days, unless the court, in
8 writing, determines there is good cause for an
9 extension or the child expressly waives this
10 limitation.

11 F. When a child is placed in an adult jail, adult lockup, adult
12 detention facility or other adult facility, he or she shall be
13 afforded the following rights and protections in order to address
14 the child's health and safety:

15 1. A copy of the child's most current mental health or suicide
16 screening instrument approved by the Office of Juvenile Affairs
17 shall be provided to the adult jail, adult lockup or adult detention
18 facility at the time of the child's transfer; and

19 2. Adult jails, adult lockups, adult detention facilities or
20 other adult facilities shall process requests for visits and allow
21 approved visitors contact visits with the child within five (5)
22 business days of the request.

23 G. 1. Except as otherwise provided in this section, no child
24 shall be placed in secure detention in a ~~an~~ adult jail, adult

1 lockup, ~~or other~~ adult detention facility or other adult facility
2 unless:

3 a. ~~the child is detained for the commission of a crime~~
4 ~~that would constitute a felony if committed by an~~
5 ~~adult, and~~

6 b. ~~the child is awaiting an initial court appearance, and~~

7 c. ~~the initial court appearance of the child is scheduled~~
8 ~~within twenty-four (24) hours after being taken into~~
9 ~~custody, excluding weekends and holidays, and~~

10 d. ~~the court of jurisdiction is outside of the Standard~~
11 ~~Metropolitan Statistical Area as defined by the Bureau~~
12 ~~of Census, and~~

13 e. ~~there is no existing acceptable alternative placement~~
14 ~~for the child, and~~

15 f. the adult jail, adult lockup or adult detention
16 facility provides sight and sound separation for
17 juveniles, pursuant to standards required by
18 subsection E of Section 2-3-103 of this title, ~~or~~ and

19 ~~g.~~

20 b. the adult jail, adult lockup or adult detention
21 facility meets the requirements for licensure of
22 juvenile detention facilities, as adopted by the
23 Office of Juvenile Affairs, is appropriately licensed,

24

1 and provides sight and sound separation for juveniles,
2 which includes:

3 (1) total separation between juveniles and adult
4 facility spatial areas such that there could be
5 no haphazard or accidental contact between
6 juvenile and adult residents in the respective
7 facilities,

8 (2) total separation in all juvenile and adult
9 program activities within the facilities,
10 including recreation, education, counseling,
11 health care, dining, sleeping and general living
12 activities, and

13 (3) separate juvenile and adult staff, specifically
14 direct care staff such as recreation, education
15 and counseling.

16 Specialized services staff, such as cooks,
17 bookkeepers, and medical professionals who are not
18 normally in contact with detainees or whose infrequent
19 contacts occur under conditions of separation of
20 juveniles and adults can serve both.

21 2. Nothing in this section shall preclude a child who is
22 detained for the commission of a crime that would constitute a
23 felony if committed by an adult, or a child who is an escapee from a
24 juvenile secure facility or from an Office of Juvenile Affairs group

1 home from being held in any jail certified by the State Department
2 of Health, police station or similar law enforcement offices for up
3 to six (6) hours for purposes of identification, processing or
4 arranging for transfer to a secure detention or alternative to
5 secure detention. Such holding shall be limited to the absolute
6 minimum time necessary to complete these actions.

7 a. The time limitations for holding a child in a jail for
8 the purposes of identification, processing or
9 arranging transfer established by this section shall
10 not include the actual travel time required for
11 transporting a child from a jail to a juvenile
12 detention facility or alternative to secure detention.

13 b. Whenever the time limitations established by this
14 subsection are exceeded, this circumstance shall not
15 constitute a defense in a subsequent delinquency or
16 criminal proceeding.

17 3. Nothing in this section shall preclude detaining in a county
18 jail or other adult detention facility an eighteen-year-old charged
19 in a juvenile petition for whom certification to stand trial as an
20 adult is prayed. However, if no certification motion is filed, the
21 eighteen-year-old may remain in a juvenile detention facility as
22 long as secure detention is required.

23 4. Nothing in this section shall preclude detaining in a county
24 jail or other adult detention facility a person provided for in

1 Section 2-3-102 of this title if written or electronically
2 transmitted confirmation is received from the state seeking return
3 of the individual that the person is a person provided for in
4 Section 2-3-102 of this title and if, during the time of detention,
5 the person is detained in a facility meeting the requirements of
6 Section 2-3-103 of this title.

7 5. Nothing in this section shall preclude detaining a person,
8 whose age is not immediately ascertainable and who is being detained
9 for the commission of a felony, in a jail certified by the State
10 Department of Health, a police station or similar law enforcement
11 office for up to twenty-four (24) hours for the purpose of
12 determining whether or not the person is a child, if:

- 13 a. there is a reasonable belief that the person is
14 eighteen (18) years of age or older,
- 15 b. there is a reasonable belief that a felony has been
16 committed by the person,
- 17 c. a court order for such detention is obtained from a
18 judge of the district court within six (6) hours of
19 initially detaining the person,
- 20 d. there is no juvenile detention facility that has space
21 available for the person and that is within thirty
22 (30) miles of the jail, police station, or law
23 enforcement office in which the person is to be
24 detained, and

1 e. during the time of detention the person is detained in
2 a facility meeting the requirements of subparagraph ~~g~~
3 b of paragraph 1 of this subsection.

4 The time limitation provided for in this paragraph shall include the
5 time the person is detained prior to the issuance of the court
6 order.

7 The time limitation provided for in this paragraph shall not include
8 the actual travel time required for transporting the person to the
9 jail, police station, or similar law enforcement office. If the
10 time limitation established by this paragraph is exceeded, this
11 circumstance shall not constitute a defense in any subsequent
12 delinquency or criminal proceeding.

13 ~~F.~~ H. Nothing contained in this section shall in any way reduce
14 or eliminate the liability of a county as otherwise provided by law
15 for injury or damages resulting from the placement of a child in ~~a~~
16 an adult jail, adult lockup, or other adult detention facility or
17 other adult facility.

18 ~~G.~~ I. Any juvenile detention facility shall be available for
19 use by any eligible Indian child as that term is defined by the
20 Oklahoma Indian Child Welfare Act, providing that the use of the
21 juvenile detention facility meets the requirements of the Oklahoma
22 Juvenile Code. The Indian tribe may contract with any juvenile
23 detention facility for the providing of detention services.
24

1 ~~H.~~ J. Each member of the staff of a juvenile detention facility
2 shall satisfactorily complete a training program provided or
3 approved by the Office of Juvenile Affairs.

4 ~~I.~~ K. Whenever a juvenile is placed in any adult jail, adult
5 lockup, ~~or other~~ adult detention facility or other adult facility,
6 the Office of Juvenile Affairs shall have access to all facilities
7 which detain such juveniles and shall have access to any data
8 regarding such juveniles. The Office of Juvenile Affairs shall have
9 access to all adult jails, adult lockups, adult detention facilities
10 or other adult facilities in this state, including all data
11 maintained by such facilities, to assure compliance with this
12 section. The Board of Juvenile Affairs shall promulgate rules as
13 necessary to implement the provisions of this section.

14 SECTION 3. AMENDATORY 10A O.S. 2011, Section 2-5-204, as
15 amended by Section 4, Chapter 155, O.S.L. 2018 (10A O.S. Supp. 2020,
16 Section 2-5-204), is amended to read as follows:

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

22 B. If the child is not otherwise represented by counsel and
23 requests an attorney prior to or during interrogation, or whenever
24 charged by information, as provided in subsection A of this section,

1 the court shall appoint an attorney, who shall not be a district
2 attorney, for the child regardless of any attempted waiver by the
3 parent, legal guardian, or other legal custodian of the child of the
4 right of the child to be represented by counsel. Counsel shall be
5 appointed by the court only upon determination by the court that the
6 parent, legal guardian or legal custodian is found to be indigent.

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

14 D. All youthful offender court records for a person who is
15 certified to stand trial as an adult or youthful offender shall be
16 considered adult records and shall not be subject to the provisions
17 of Chapter 6 of the Oklahoma Juvenile Code; provided, however, all
18 reports, evaluations, motions, records, exhibits or documents
19 regarding the educational history, mental health or medical
20 treatment or condition of the offender that are submitted to the
21 court or admitted into evidence during the hearing on the motion for
22 certification as a youthful offender to the juvenile system or
23 motion for imposition of an adult sentence shall be confidential and
24 shall be filed or admitted under seal, except that such records

1 shall be provided to the Office of Juvenile Affairs. Any testimony
2 regarding the reports, evaluations, motions, records, exhibits or
3 documents shall be given in camera and shall not be open to the
4 general public; provided, all persons having a direct interest in
5 the case as provided in paragraph 1 of subsection A of Section 2-2-
6 402 of this title shall be allowed to be present during the
7 testimony but shall be admonished not to discuss the testimony
8 following the hearing. All reports, evaluations, motions, records,
9 exhibits or documents shall be released from under seal by order of
10 the court if the youthful offender is sentenced to the custody or
11 supervision of the Department of Corrections by the court pursuant
12 to paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of
13 subsection B of Section 2-5-210 of this title or if the juvenile or
14 youthful offender is later charged as an adult with a felony crime.

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

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

1 ~~facility operator shall forthwith notify the Office of Juvenile~~
2 ~~Affairs of any such arrest and detention.~~

3 G. Upon certification for the imposition of an adult sentence,
4 a verdict of guilty or entry of a plea of guilty or nolo contendere
5 by a youthful offender who has been certified for the imposition of
6 an adult sentence as provided by Section 2-5-208 of this title, the
7 person may be detained ~~as an adult and, if incarcerated, may be~~
8 ~~incarcerated with the adult population~~ in an adult jail, adult
9 lockup, adult detention facility or other adult facility if that
10 facility is licensed by the State Department of Health to detain
11 children under eighteen (18) years of age while the person is
12 awaiting housing by the Department of Corrections.

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

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

22 2. The youthful offender has been certified for the imposition
23 of an adult sentence as provided by Section 2-5-208 of this title
24

1 and is subsequently convicted of the alleged offense or against whom
2 the imposition of judgment and sentencing has been deferred.

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

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

11 SECTION 4. AMENDATORY 10A O.S. 2011, Section 2-5-209, as
12 amended by Section 9, Chapter 155, O.S.L. 2018 (10A O.S. Supp. 2020,
13 Section 2-5-209), is amended to read as follows:

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

17 1. A youthful offender presentence investigation shall be
18 conducted unless waived by the youthful offender with approval of
19 the court or unless an investigation is conducted pursuant to
20 subsection C of Section 2-5-208 of this title. All reports,
21 evaluations, motions, records, exhibits or documents regarding the
22 educational history, mental health or medical treatment or condition
23 of the offender that are submitted to the court or admitted into
24 evidence during the hearing on the motion for certification of the

1 accused youthful offender to the juvenile system or motion for
2 imposition of an adult sentence are confidential and shall be filed
3 or admitted under seal, except that such records shall be provided
4 to the Office of Juvenile Affairs. Any testimony regarding the
5 reports, evaluations, motions, records, exhibits or documents shall
6 be given in camera and shall not be open to the general public;
7 provided, all persons having a direct interest in the case as
8 provided in paragraph 1 of subsection A of Section 2-2-402 of this
9 title shall be allowed to be present during the testimony but shall
10 be admonished not to discuss the testimony following the hearing.
11 All reports, evaluations, motions, records, exhibits or documents
12 shall be released from under seal by order of the court if the
13 youthful offender is sentenced to the custody or supervision of the
14 Department of Corrections by the court pursuant to paragraph 1 of
15 subsection B of ~~Section 2-5-209~~ this section or paragraph 5 of
16 subsection B of Section 2-5-210 of this title or if the juvenile or
17 youthful offender is later charged as an adult with a felony crime.
18 Any presentence investigation required by this section shall be
19 conducted by the Office of Juvenile Affairs; and

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

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

- 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

1 youthful offender, and such youthful offender shall be subject to
2 the same type of sentencing procedures and duration of sentence,
3 except for capital offenses, including suspension or deferment, as
4 an adult convicted of a felony offense, except that any sentence
5 imposed upon the youthful offender shall be served in the custody or
6 under the supervision of the Office of Juvenile Affairs until the
7 expiration of the sentence, the youthful offender is discharged, or
8 the youthful offender reaches eighteen (18) years of age, whichever
9 first occurs. If an individual sentenced as a youthful offender
10 attains eighteen (18) years of age prior to the expiration of the
11 sentence, such individual shall be returned to the sentencing court.
12 At that time, the sentencing court shall make one of the following
13 determinations:

- 14 a. whether the youthful offender shall be returned to the
15 Office of Juvenile Affairs to complete a treatment
16 program, provided that the treatment program shall not
17 exceed the youthful offender's attainment of eighteen
18 (18) years and six (6) months of age. At the
19 conclusion of the treatment program, the individual
20 shall be returned to the sentencing court for a
21 determination under subparagraph b, c or d of this
22 paragraph,
- 23 b. whether the youthful offender shall be placed in the
24 custody of the Department of Corrections,

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

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

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

7 3. Upon the youthful offender attaining the age of eighteen
8 (18) years and six (6) months, the Office of Juvenile Affairs may
9 recommend that the youthful offender be returned to the custody or
10 supervision of the Office of Juvenile Affairs until the age of
11 nineteen (19) years to complete the reintegration phase of the
12 treatment program or community supervision as determined by the
13 Office of Juvenile Affairs. During any period of extension, a
14 youthful offender may be transferred to the Department of
15 Corrections as provided in paragraph 5 of subsection B of Section 2-
16 5-210 of this title, whether the youthful offender is placed in an
17 out-of-home placement or in the community.

18 4. If the court has extended jurisdiction of the youthful
19 offender until nineteen (19) years of age, the youthful offender
20 shall remain in custody or under the supervision of the Office of
21 Juvenile Affairs until the youthful offender has been discharged or
22 sentenced by the court or until the youthful offender's nineteenth
23 birthday, at which time the youthful offender shall be returned to
24 the court for final disposition of the youthful offender's case.

1 The court shall have the same dispositional options as provided in
2 subparagraphs b, c and d of paragraph 1 of this subsection.

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

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

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

11 6. In addition to or in lieu of the placement of the youthful
12 offender in the custody of or under the supervision of the Office of
13 Juvenile Affairs, the court may issue orders with regard to the
14 youthful offender as provided by law for the disposition of an
15 adjudicated juvenile delinquent as long as the age of the youthful
16 offender does not exceed nineteen (19) years.

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

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

22 9. Any order issued by the sentencing court under this
23 subsection shall be a final order, appealable when entered.
24

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

9 SECTION 5. This act shall become effective November 1, 2021.”
10

11 Passed the Senate the 19th day of April, 2021.
12

13 _____
14 Presiding Officer of the Senate

15 Passed the House of Representatives the ____ day of _____,
16 2021.
17

18 _____
19 Presiding Officer of the House
20 of Representatives
21
22
23
24

1 ENGROSSED HOUSE
2 BILL NO. 2311

By: Lawson and Munson of the
House

3 and

4 Haste of the Senate
5

6 An Act relating to children; amending 10A O.S. 2011,
7 Sections 2-2-403, 2-3-101, as last amended by Section
8 1, Chapter 22, O.S.L. 2020, 2-5-204, as amended by
9 Section 4, Chapter 155, O.S.L. 2018 and 2-5-209, as
10 amended by Section 9, Chapter 155, O.S.L. 2018 (10A
11 O.S. Supp. 2020, Sections 2-3-101, 2-5-204 and 2-5-
12 209), which relate to detention of children in adult
13 facilities; providing for incarceration of juveniles
14 sentenced as adults; prohibiting detainment of
15 children in adult facilities; providing exceptions;
16 requiring hearing and certain findings before
17 confinement of child in adult facility; establishing
18 factors for court to consider; affording certain
19 rights and protections to child; providing for
20 detention of youthful offenders; and providing an
21 effective date.

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

23 SECTION 6. AMENDATORY 10A O.S. 2011, Section 2-2-403, is
24 amended to read as follows:

Section 2-2-403. A. Except as otherwise provided by law, if a
child is charged with a delinquent act as a result of an offense
which would be a felony if committed by an adult, the court on its
own motion or at the request of the district attorney shall conduct
a preliminary hearing to determine whether or not there is
prosecutive merit to the complaint. If the court finds that

1 prosecutive merit exists, it shall continue the hearing for a
2 sufficient period of time to conduct an investigation and further
3 hearing to determine if the child should be held accountable for
4 acts of the child as if the child were an adult if the child should
5 be found to have committed the alleged act or omission.

6 Consideration shall be given to:

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

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

14 3. The sophistication and maturity of the juvenile and
15 capability of the juvenile of distinguishing right from wrong as
16 determined by consideration of a psychological evaluation of the
17 juvenile, home, environmental situation, emotional attitude and
18 pattern of living;

19 4. The record and previous history of the accused person,
20 including previous contacts with community agencies, law enforcement
21 agencies, schools, juvenile or criminal courts and other
22 jurisdictions, prior periods of probation or prior commitments to
23 juvenile institutions;

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

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

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

7 After the investigation and hearing, the court may in its
8 discretion proceed with the juvenile proceeding, or it shall state
9 its reasons in writing and shall certify, based on clear and
10 convincing evidence, that the child shall be held accountable for
11 acts of the child as if the child were an adult and shall be held
12 for proper criminal proceedings for the specific offense charged, by
13 any other division of the court which would have trial jurisdiction
14 of the offense if committed by an adult. The juvenile proceeding
15 shall not be dismissed until the criminal proceeding has commenced
16 and if no criminal proceeding commences within thirty (30) days of
17 the date of the certification, unless stayed pending appeal, the
18 court shall proceed with the juvenile proceeding and the
19 certification shall lapse.

20 If not included in the original summons, notice of a hearing to
21 consider whether a child should be certified for trial as an adult
22 shall be given to all persons who are required to be served with a
23 summons at the commencement of a juvenile proceeding, but
24 publication in a newspaper when the address of a person is unknown

1 is not required. The purpose of the hearing shall be clearly stated
2 in the notice.

3 B. Prior to the entry of any order of certification, any child
4 in custody shall have the same right to be released upon bail as
5 would an adult under the same circumstances. Subsequent to the
6 entry of an order that a child stand trial as an adult, the child
7 shall have all the statutory and constitutional rights and
8 protections of an adult accused of a crime ~~but shall, while awaiting~~
9 ~~trial and for the duration of the trial, be detained in a jail cell~~
10 ~~or ward entirely separate from prisoners who are eighteen (18) years~~
11 ~~of age or over.~~ Upon conviction, the juvenile may be incarcerated
12 with the adult population in an adult jail, adult lockup, adult
13 detention facility or other adult facility if that facility is
14 licensed by the Office of Juvenile Affairs to detain children under
15 eighteen (18) years of age while the person is awaiting housing by
16 the Department of Corrections. If, prior to the entry of any order
17 of certification, the child becomes eighteen (18) years of age, the
18 child may be detained in a county jail or released on bail. If a
19 child is certified to stand trial as an adult, the court shall make
20 every effort to avoid duplication of the adult preliminary hearing
21 and the prosecutorial hearing in the juvenile certification process.
22 The parties may jointly stipulate to the court that the record for
23 the prosecutorial merit hearing in the juvenile proceeding be used
24 for all or part of the preliminary hearing.

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

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

11 SECTION 7. AMENDATORY 10A O.S. 2011, Section 2-3-101, as
12 last amended by Section 1, Chapter 22, O.S.L. 2020 (10A O.S. Supp.
13 2020, Section 2-3-101), is amended to read as follows:

14 Section 2-3-101. A. When a child is taken into custody
15 pursuant to the provisions of the Oklahoma Juvenile Code, the child
16 shall be detained only if it is necessary to assure the appearance
17 of the child in court or for the protection of the child or the
18 public.

- 19 1. a. No child twelve (12) years of age or younger shall be
20 placed in a juvenile detention facility unless all
21 alternatives have been exhausted and the child is
22 currently charged with a criminal offense that would
23 constitute a felony if committed by an adult and it
24 has been indicated by a risk-assessment screening that

1 the child requires detention. The detention of any
2 child twelve (12) years of age or younger shall be
3 judicially reviewed pursuant to subparagraph c of this
4 paragraph.

5 b. Any child who is thirteen (13) or fourteen (14) years
6 of age may be admitted to a juvenile detention
7 facility only after all alternatives have been
8 exhausted and the child is currently charged with a
9 criminal offense that would constitute a felony if
10 committed by an adult and it has been indicated by a
11 risk-assessment screening that the child requires
12 detention.

13 c. No preadjudicatory or predisposition detention or
14 custody order shall remain in force and effect for
15 more than thirty (30) days. The court, for good and
16 sufficient cause shown, may extend the effective
17 period of such an order for an additional period not
18 to exceed sixty (60) days. If the child is being
19 detained for the commission of a murder, the court
20 may, if it is in the best interests of justice, extend
21 the effective period of such an order an additional
22 sixty (60) days.

23 d. Whenever the court orders a child to be held in a
24 juvenile detention facility, an order for secure

1 detention shall remain in force and effect for not
2 more than fifteen (15) days after such order. Upon an
3 application of the district attorney and after a
4 hearing on such application, the court, for good and
5 sufficient cause shown, may extend the effective
6 period of such an order for an additional period not
7 to exceed fifteen (15) days after such hearing. The
8 total period of preadjudicatory or predisposition
9 shall not exceed the ninety-day limitation as
10 specified in subparagraph a of this paragraph. The
11 child shall be present at the hearing on the
12 application for extension unless, as authorized and
13 approved by the court, the attorney for the child is
14 present at the hearing and the child is available to
15 participate in the hearing via telephone conference
16 communication. For the purpose of this paragraph,
17 "telephone conference communication" means use of a
18 telephone device that allows all parties, including
19 the child, to hear and be heard by the other parties
20 at the hearing. After the hearing, the court may
21 order continued detention in a juvenile detention
22 center, may order the child detained in an alternative
23 to secure detention or may order the release of the
24 child from detention.

1 2. No child alleged or adjudicated to be deprived or in need of
2 supervision or who is or appears to be a minor in need of treatment
3 as defined by the Inpatient Mental Health and Substance Abuse
4 Treatment of Minors Act, shall be confined in any jail, adult
5 lockup, or adult detention facility. No child shall be transported
6 or detained in association with criminal, vicious, or dissolute
7 persons.

8 3. Except as otherwise authorized by this section a child who
9 has been taken into custody as a deprived child, a child in need of
10 supervision, or who appears to be a minor in need of treatment, may
11 not be placed in any detention facility pending court proceedings,
12 but must be placed in shelter care or foster care or, with regard to
13 a child who appears to be a minor in need of treatment, a behavioral
14 health treatment facility in accordance with the provisions of the
15 Inpatient Mental Health and Substance Abuse Treatment of Minors Act,
16 or released to the custody of the parents of the child or some other
17 responsible party. Provided, this shall not preclude runaway
18 juveniles from other states, with or without delinquent status, to
19 be held in a detention facility in accordance with the Interstate
20 Compact for Juveniles in Sections 2-9-101 through 2-9-116 of this
21 title and rules promulgated by the Interstate Commission.

22 B. No child shall be placed in secure detention unless:

23 1. The child is an escapee from any delinquent placement;
24

1 2. The child is a fugitive from another jurisdiction with a
2 warrant on a delinquency charge or confirmation of delinquency
3 charges by the home jurisdiction;

4 3. The child is seriously assaultive or destructive towards
5 others or self;

6 4. The child is currently charged with any criminal offense
7 that would constitute a felony if committed by an adult or a
8 misdemeanor and:

9 a. is on probation or parole on a prior delinquent
10 offense,

11 b. is on preadjudicatory community supervision, or

12 c. is currently on release status on a prior delinquent
13 offense;

14 5. The child has willfully failed or there is reason to believe
15 that the child will willfully fail to appear for juvenile court
16 proceedings;

17 6. A warrant for the child has been issued on the basis that:

18 a. the child is absent from court-ordered placement
19 without approval by the court,

20 b. the child is absent from designated placement by the
21 Office of Juvenile Affairs without approval by the
22 Office of Juvenile Affairs,

23 c. there is reason to believe the child will not remain
24 at said placement, or

1 d. the child is subject to an administrative transfer or
2 parole revocation proceeding.

3 C. A child who has violated a court order and has had the order
4 revoked or modified pursuant to Section 2-2-503 of this title may be
5 placed into an Office-of-Juvenile-Affairs-designated sanction
6 detention bed or an Office-of-Juvenile-Affairs-approved sanction
7 program.

8 D. Priority shall be given to the use of juvenile detention
9 facilities for the detention of juvenile offenders through
10 provisions requiring the removal from detention of a juvenile with a
11 lower priority status if an empty detention bed is not available at
12 the time of referral of a juvenile with a higher priority status and
13 if the juvenile with a higher priority status would be more of a
14 danger to the public than the juvenile with the lower priority
15 status.

16 E. Juvenile detention facilities shall be the default placement
17 for all persons under seventeen (17) years of age. No child shall
18 be placed in secure detention in an adult jail, adult lockup, adult
19 detention facility or other adult facility except as provided in
20 this section.

21 1. Any child who is at least fifteen (15) years of age who is
22 charged with murder in the first degree may be detained in an adult
23 jail, adult lockup, adult detention facility or other adult facility
24 only after a hearing in which the child is provided representation

1 and a written court order stating that it is in the interest of
2 justice that the child be placed in an adult jail, adult lockup,
3 adult detention facility or other adult facility and if that
4 facility is licensed by the Office of Juvenile Affairs to detain
5 children under eighteen (18) years of age.

6 2. In determining whether it is in the interest of justice that
7 a child who is at least fifteen (15) years of age and who is charged
8 with murder in the first degree be placed in an adult jail, adult
9 lockup, adult detention facility or other adult facility, the court
10 shall consider:

- 11 a. the age of the child,
- 12 b. the physical and mental maturity of the child,
- 13 c. the present mental state of the child, including
14 whether the child presents an imminent risk of harm to
15 himself or herself,
- 16 d. the nature and circumstances of the alleged offense,
- 17 e. the child's history of prior delinquent acts,
- 18 f. the relative ability of the available adult and
19 juvenile detention facilities to not only meet the
20 specific needs of the child but also to protect the
21 safety of the public as well as other detained youth,
22 and
- 23 g. any other relevant factors.

1 3. If a court determines that it is in the interest of justice
2 that the child be placed in an adult jail, adult lockup, adult
3 detention facility or other adult facility:

- 4 a. the court shall hold a hearing not less frequently
5 than once every thirty (30) days, or in the case of a
6 rural jurisdiction, which is any jurisdiction not
7 located in a metropolitan statistical area, as defined
8 by the United States Office of Management and Budget,
9 not less frequently than once every forty-five (45)
10 days, to review whether it is still in the interest of
11 justice to permit the juvenile to be so held, and
12 b. the child shall not be held in any adult jail or
13 lockup for adults for more than one hundred eighty
14 (180) days, unless the court, in writing, determines
15 there is good cause for an extension or the child
16 expressly waives this limitation.

17 F. When a child is placed in an adult jail, adult lockup, adult
18 detention facility or other adult facility, he or she shall be
19 afforded the following rights and protections in order to address
20 the child's health and safety:

21 1. A copy of the child's most current mental health or suicide
22 screening instrument approved by the Office of Juvenile Affairs
23 shall be provided to the adult jail, adult lockup or adult detention
24 facility at the time of the child's transfer; and

1 2. Adult jails, adult lockups, adult detention facilities or
2 other adult facilities shall process requests for visits and allow
3 approved visitors contact visits with the child within five (5)
4 business days of the request.

5 G. 1. Except as otherwise provided in this section, no child
6 shall be placed in secure detention in ~~a~~ an adult jail, adult
7 lockup, ~~or other~~ adult detention facility or other adult facility
8 unless:

- 9 ~~a. the child is detained for the commission of a crime~~
10 ~~that would constitute a felony if committed by an~~
11 ~~adult, and~~
12 ~~b. the child is awaiting an initial court appearance, and~~
13 ~~c. the initial court appearance of the child is scheduled~~
14 ~~within twenty-four (24) hours after being taken into~~
15 ~~custody, excluding weekends and holidays, and~~
16 ~~d. the court of jurisdiction is outside of the Standard~~
17 ~~Metropolitan Statistical Area as defined by the Bureau~~
18 ~~of Census, and~~
19 ~~e. there is no existing acceptable alternative placement~~
20 ~~for the child, and~~
21 ~~f.~~ the adult jail, adult lockup or adult detention
22 facility provides sight and sound separation for
23 juveniles, pursuant to standards required by
24 subsection E of Section 2-3-103 of this title, ~~or~~ and

~~g.~~

b. the adult jail, adult lockup or adult detention facility meets the requirements for licensure of juvenile detention facilities, as adopted by the Office of Juvenile Affairs, is appropriately licensed, and provides sight and sound separation for juveniles, which includes:

(1) total separation between juveniles and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities,

(2) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities, and

(3) separate juvenile and adult staff, specifically direct care staff such as recreation, education and counseling.

Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent

1 contacts occur under conditions of separation of
2 juveniles and adults can serve both.

3 2. Nothing in this section shall preclude a child who is
4 detained for the commission of a crime that would constitute a
5 felony if committed by an adult, or a child who is an escapee from a
6 juvenile secure facility or from an Office of Juvenile Affairs group
7 home from being held in any jail certified by the State Department
8 of Health, police station or similar law enforcement offices for up
9 to six (6) hours for purposes of identification, processing or
10 arranging for transfer to a secure detention or alternative to
11 secure detention. Such holding shall be limited to the absolute
12 minimum time necessary to complete these actions.

13 a. The time limitations for holding a child in a jail for
14 the purposes of identification, processing or
15 arranging transfer established by this section shall
16 not include the actual travel time required for
17 transporting a child from a jail to a juvenile
18 detention facility or alternative to secure detention.

19 b. Whenever the time limitations established by this
20 subsection are exceeded, this circumstance shall not
21 constitute a defense in a subsequent delinquency or
22 criminal proceeding.

23 3. Nothing in this section shall preclude detaining in a county
24 jail or other adult detention facility an eighteen-year-old charged

1 in a juvenile petition for whom certification to stand trial as an
2 adult is prayed. However, if no certification motion is filed, the
3 eighteen-year-old may remain in a juvenile detention facility as
4 long as secure detention is required.

5 4. Nothing in this section shall preclude detaining in a county
6 jail or other adult detention facility a person provided for in
7 Section 2-3-102 of this title if written or electronically
8 transmitted confirmation is received from the state seeking return
9 of the individual that the person is a person provided for in
10 Section 2-3-102 of this title and if, during the time of detention,
11 the person is detained in a facility meeting the requirements of
12 Section 2-3-103 of this title.

13 5. Nothing in this section shall preclude detaining a person,
14 whose age is not immediately ascertainable and who is being detained
15 for the commission of a felony, in a jail certified by the State
16 Department of Health, a police station or similar law enforcement
17 office for up to twenty-four (24) hours for the purpose of
18 determining whether or not the person is a child, if:

19 a. there is a reasonable belief that the person is
20 eighteen (18) years of age or older,

21 b. there is a reasonable belief that a felony has been
22 committed by the person,
23
24

1 c. a court order for such detention is obtained from a
2 judge of the district court within six (6) hours of
3 initially detaining the person,

4 d. there is no juvenile detention facility that has space
5 available for the person and that is within thirty
6 (30) miles of the jail, police station, or law
7 enforcement office in which the person is to be
8 detained, and

9 e. during the time of detention the person is detained in
10 a facility meeting the requirements of subparagraph ~~g~~
11 b of paragraph 1 of this subsection.

12 The time limitation provided for in this paragraph shall include the
13 time the person is detained prior to the issuance of the court
14 order.

15 The time limitation provided for in this paragraph shall not include
16 the actual travel time required for transporting the person to the
17 jail, police station, or similar law enforcement office. If the
18 time limitation established by this paragraph is exceeded, this
19 circumstance shall not constitute a defense in any subsequent
20 delinquency or criminal proceeding.

21 ~~F.~~ H. Nothing contained in this section shall in any way reduce
22 or eliminate the liability of a county as otherwise provided by law
23 for injury or damages resulting from the placement of a child in a
24

1 an adult jail, adult lockup, ~~or other~~ adult detention facility or
2 other adult facility.

3 ~~G.~~ I. Any juvenile detention facility shall be available for
4 use by any eligible Indian child as that term is defined by the
5 Oklahoma Indian Child Welfare Act, providing that the use of the
6 juvenile detention facility meets the requirements of the Oklahoma
7 Juvenile Code. The Indian tribe may contract with any juvenile
8 detention facility for the providing of detention services.

9 ~~H.~~ J. Each member of the staff of a juvenile detention facility
10 shall satisfactorily complete a training program provided or
11 approved by the Office of Juvenile Affairs.

12 ~~I.~~ K. Whenever a juvenile is placed in any adult jail, adult
13 lockup, ~~or other~~ adult detention facility or other adult facility,
14 the Office of Juvenile Affairs shall have access to all facilities
15 which detain such juveniles and shall have access to any data
16 regarding such juveniles. The Office of Juvenile Affairs shall have
17 access to all adult jails, adult lockups, adult detention facilities
18 or other adult facilities in this state, including all data
19 maintained by such facilities, to assure compliance with this
20 section. The Board of Juvenile Affairs shall promulgate rules as
21 necessary to implement the provisions of this section.

22 SECTION 8. AMENDATORY 10A O.S. 2011, Section 2-5-204, as
23 amended by Section 4, Chapter 155, O.S.L. 2018 (10A O.S. Supp. 2020,
24 Section 2-5-204), is amended to read as follows:

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

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

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

22 D. All youthful offender court records for a person who is
23 certified to stand trial as an adult or youthful offender shall be
24 considered adult records and shall not be subject to the provisions

1 of Chapter 6 of the Oklahoma Juvenile Code; provided, however, all
2 reports, evaluations, motions, records, exhibits or documents
3 regarding the educational history, mental health or medical
4 treatment or condition of the offender that are submitted to the
5 court or admitted into evidence during the hearing on the motion for
6 certification as a youthful offender to the juvenile system or
7 motion for imposition of an adult sentence shall be confidential and
8 shall be filed or admitted under seal, except that such records
9 shall be provided to the Office of Juvenile Affairs. Any testimony
10 regarding the reports, evaluations, motions, records, exhibits or
11 documents shall be given in camera and shall not be open to the
12 general public; provided, all persons having a direct interest in
13 the case as provided in paragraph 1 of subsection A of Section 2-2-
14 402 of this title shall be allowed to be present during the
15 testimony but shall be admonished not to discuss the testimony
16 following the hearing. All reports, evaluations, motions, records,
17 exhibits or documents shall be released from under seal by order of
18 the court if the youthful offender is sentenced to the custody or
19 supervision of the Department of Corrections by the court pursuant
20 to paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of
21 subsection B of Section 2-5-210 of this title or if the juvenile or
22 youthful offender is later charged as an adult with a felony crime.

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

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

11 G. Upon certification for the imposition of an adult sentence,
12 a verdict of guilty or entry of a plea of guilty or nolo contendere
13 by a youthful offender who has been certified for the imposition of
14 an adult sentence as provided by Section 2-5-208 of this title, the
15 person may be detained ~~as an adult and, if incarcerated, may be~~
16 ~~incarcerated with the adult population~~ in an adult jail, adult
17 lockup, adult detention facility or other adult facility if that
18 facility is licensed by the Office of Juvenile Affairs to detain
19 children under eighteen (18) years of age while the person is
20 awaiting housing by the Department of Corrections.

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

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

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

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

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

18 SECTION 9. AMENDATORY 10A O.S. 2011, Section 2-5-209, as
19 amended by Section 9, Chapter 155, O.S.L. 2018 (10A O.S. Supp. 2020,
20 Section 2-5-209), is amended to read as follows:

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

1 1. A youthful offender presentence investigation shall be
2 conducted unless waived by the youthful offender with approval of
3 the court or unless an investigation is conducted pursuant to
4 subsection C of Section 2-5-208 of this title. All reports,
5 evaluations, motions, records, exhibits or documents regarding the
6 educational history, mental health or medical treatment or condition
7 of the offender that are submitted to the court or admitted into
8 evidence during the hearing on the motion for certification of the
9 accused youthful offender to the juvenile system or motion for
10 imposition of an adult sentence are confidential and shall be filed
11 or admitted under seal, except that such records shall be provided
12 to the Office of Juvenile Affairs. Any testimony regarding the
13 reports, evaluations, motions, records, exhibits or documents shall
14 be given in camera and shall not be open to the general public;
15 provided, all persons having a direct interest in the case as
16 provided in paragraph 1 of subsection A of Section 2-2-402 of this
17 title shall be allowed to be present during the testimony but shall
18 be admonished not to discuss the testimony following the hearing.
19 All reports, evaluations, motions, records, exhibits or documents
20 shall be released from under seal by order of the court if the
21 youthful offender is sentenced to the custody or supervision of the
22 Department of Corrections by the court pursuant to paragraph 1 of
23 subsection B of ~~Section 2-5-209~~ this section or paragraph 5 of
24 subsection B of Section 2-5-210 of this title or if the juvenile or

1 youthful offender is later charged as an adult with a felony crime.
2 Any presentence investigation required by this section shall be
3 conducted by the Office of Juvenile Affairs; and

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

6 a. whether the offense was committed in an aggressive,
7 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 person, including
12 previous contacts with law enforcement agencies and
13 juvenile or criminal courts, prior periods of
14 probation and commitments to juvenile institutions,

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

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

23 f. the reasonable likelihood of rehabilitation of the
24 person if found to have committed the offense, by the

1 use of procedures and facilities currently available
2 to the juvenile, and

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

6 B. 1. After the hearing and consideration of the report of the
7 presentence investigation, the court shall impose sentence as a
8 youthful offender, and such youthful offender shall be subject to
9 the same type of sentencing procedures and duration of sentence,
10 except for capital offenses, including suspension or deferment, as
11 an adult convicted of a felony offense, except that any sentence
12 imposed upon the youthful offender shall be served in the custody or
13 under the supervision of the Office of Juvenile Affairs until the
14 expiration of the sentence, the youthful offender is discharged, or
15 the youthful offender reaches eighteen (18) years of age, whichever
16 first occurs. If an individual sentenced as a youthful offender
17 attains eighteen (18) years of age prior to the expiration of the
18 sentence, such individual shall be returned to the sentencing court.
19 At that time, the sentencing court shall make one of the following
20 determinations:

21 a. whether the youthful offender shall be returned to the
22 Office of Juvenile Affairs to complete a treatment
23 program, provided that the treatment program shall not
24 exceed the youthful offender's attainment of eighteen

1 (18) years and six (6) months of age. At the
2 conclusion of the treatment program, the individual
3 shall be returned to the sentencing court for a
4 determination under subparagraph b, c or d of this
5 paragraph,

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

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

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

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

14 3. Upon the youthful offender attaining the age of eighteen
15 (18) years and six (6) months, the Office of Juvenile Affairs may
16 recommend that the youthful offender be returned to the custody or
17 supervision of the Office of Juvenile Affairs until the age of
18 nineteen (19) years to complete the reintegration phase of the
19 treatment program or community supervision as determined by the
20 Office of Juvenile Affairs. During any period of extension, a
21 youthful offender may be transferred to the Department of
22 Corrections as provided in paragraph 5 of subsection B of Section 2-
23 5-210 of this title, whether the youthful offender is placed in an
24 out-of-home placement or in the community.

1 4. If the court has extended jurisdiction of the youthful
2 offender until nineteen (19) years of age, the youthful offender
3 shall remain in custody or under the supervision of the Office of
4 Juvenile Affairs until the youthful offender has been discharged or
5 sentenced by the court or until the youthful offender's nineteenth
6 birthday, at which time the youthful offender shall be returned to
7 the court for final disposition of the youthful offender's case.
8 The court shall have the same dispositional options as provided in
9 subparagraphs b, c and d of paragraph 1 of this subsection.

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

- 12 a. the Office of Juvenile Affairs or designated
13 representative, if the youthful offender is under
14 eighteen (18) years of age, or
- 15 b. the Department of Corrections or designated
16 representative, upon the youthful offender attaining
17 eighteen (18) years of age.

18 6. In addition to or in lieu of the placement of the youthful
19 offender in the custody of or under the supervision of the Office of
20 Juvenile Affairs, the court may issue orders with regard to the
21 youthful offender as provided by law for the disposition of an
22 adjudicated juvenile delinquent as long as the age of the youthful
23 offender does not exceed nineteen (19) years.

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

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

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

8 C. A youthful offender who is ~~seventeen (17) or~~ eighteen (18)
9 years of age or older and who has been sentenced to the custody of
10 the Office of Juvenile Affairs may be detained in a county jail
11 pending placement in an Office of Juvenile Affairs facility~~7~~
12 ~~provided the county jail meets the jail standards promulgated by the~~
13 ~~State Department of Health for juvenile offenders. The youthful~~
14 ~~offender who is eighteen (18) years of age or older and~~ and may be held
15 in the general population of the county jail.

16 SECTION 10. This act shall become effective November 1, 2021.
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1 Passed the House of Representatives the 1st day of March, 2021.

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3
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2021.

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8 Presiding Officer of the Senate