

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 SENATE BILL 1258

By: Young

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5  
6 AS INTRODUCED

7 An Act relating to sentencing of juveniles; amending  
8 10A O.S. 2021, Section 2-5-208, which relates to  
9 sentencing child as an adult; prohibiting imposition  
10 of certain terms of imprisonment for certain persons;  
11 amending 22 O.S. 2021, Section 985.1, which relates  
12 to departure from mandatory minimum sentencing;  
13 requiring court to depart from mandatory minimum  
14 sentence under certain circumstances; and providing  
15 an effective date.

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

SECTION 1. AMENDATORY 10A O.S. 2021, Section 2-5-208, is  
amended to read as follows:

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

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

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

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

18           C. 1. The court shall order an investigation to be conducted  
19 unless waived by the accused person with approval of the court. Any  
20 such investigation required shall be conducted by the Office of  
21 Juvenile Affairs. All reports, evaluations, motions, records,  
22 exhibits or documents regarding the educational history, mental  
23 health or medical treatment or condition of the offender that are  
24 submitted to the court or admitted into evidence during the hearing

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

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,

- 1 c. the record and past history of the accused person,  
2 including previous contacts with law enforcement  
3 agencies and juvenile or criminal courts, prior  
4 periods of probation and commitments to juvenile  
5 institutions,
- 6 d. the sophistication and maturity of the accused person  
7 and the capability of distinguishing right from wrong  
8 as determined by consideration of the psychological  
9 evaluation, home, environmental situation, emotional  
10 attitude and pattern of living of the accused person,
- 11 e. the prospects for adequate protection of the public if  
12 the accused person is processed through the youthful  
13 offender system or the juvenile system,
- 14 f. the reasonable likelihood of rehabilitation of the  
15 accused person if the accused person is found to have  
16 committed the alleged offense, by the use of  
17 procedures and facilities currently available to the  
18 juvenile court, and
- 19 g. whether the offense occurred while the accused person  
20 was escaping or on escape status from an institution  
21 for youthful offenders or delinquent children.

22 D. After the hearing and consideration of the report of the  
23 investigation, the court shall certify the person as eligible for  
24 the imposition of an adult sentence only if it finds by clear and  
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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; provided, however, in no event shall a person  
21 who was under eighteen (18) years of age at the time the offense was  
22 committed be sentenced to life imprisonment without the possibility  
23 of parole or be given a mandatory minimum sentence that carries a  
24 term of imprisonment that exceeds twenty (20) years. When sentence

1 is imposed pursuant to this subsection, the person shall be treated  
2 as an adult for purposes of supervision, incarceration and in all  
3 subsequent criminal proceedings.

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

11 SECTION 2. AMENDATORY 22 O.S. 2021, Section 985.1, is  
12 amended to read as follows:

13 Section 985.1. A. When sentencing a person convicted of a  
14 criminal offense for which there is a mandatory minimum sentence of  
15 imprisonment, the court may depart from the applicable sentence if  
16 the court finds substantial and compelling reasons on the record,  
17 after giving due regard to the nature of the crime, history, and  
18 character of the defendant and his or her chances of successful  
19 rehabilitation, that:

20 1. The mandatory minimum sentence of imprisonment is not  
21 necessary for the protection of the public; ~~or~~

22 2. Imposition of the mandatory minimum sentence of imprisonment  
23 would result in substantial injustice to the defendant; or  
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1           3. The mandatory minimum sentence of imprisonment is not  
2 necessary for the protection of the public and the defendant, based  
3 on a risk and needs assessment, is eligible for an alternative  
4 court, a diversion program or community sentencing, without regard  
5 to exclusions because of previous convictions, and has been accepted  
6 to the same, pending sentencing.

7           B. The court shall not have the discretion to depart from the  
8 applicable mandatory minimum sentence of imprisonment on convictions  
9 for criminal offenses under the following circumstances:

10           1. The offense for which the defendant was convicted is among  
11 those crimes listed in Section 571 of Title 57 of the Oklahoma  
12 Statutes as excepted from the definition of "nonviolent offense";

13           2. The offense for which the defendant was convicted was a sex  
14 offense and will require the defendant to register as a sex offender  
15 pursuant to the provisions of the Sex Offenders Registration Act;

16           3. The offense for which the defendant was convicted involved  
17 the use of a firearm;

18           4. The offense for which the defendant was convicted is a crime  
19 listed in Section 13.1 of Title 21 of the Oklahoma Statutes  
20 requiring the defendant to serve not less than eighty-five percent  
21 (85%) of any sentence of imprisonment imposed by the judicial system  
22 prior to becoming eligible for consideration for parole;

1           5. The offense for which the defendant was convicted is a  
2 violation of the Trafficking in Illegal Drugs Act as provided in  
3 Sections 2-414 through 2-420 of Title 63 of the Oklahoma Statutes;

4           6. The defendant was the leader, manager or supervisor of  
5 others in a continuing criminal enterprise; or

6           7. The offense for which the defendant was convicted is a  
7 violation of the Oklahoma Antiterrorism Act as provided in Sections  
8 1268 through 1268.8 of Title 21 of the Oklahoma Statutes.

9           C. Any departure from the mandatory minimum sentence as  
10 authorized in this section shall not reduce the sentence to less  
11 than twenty-five percent (25%) of the mandatory term.

12           D. The court shall depart from the applicable mandatory minimum  
13 sentence as required pursuant to subsection F of Section 2-5-208 of  
14 Title 10A of the Oklahoma Statutes.

15           SECTION 3. This act shall become effective November 1, 2022.

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