

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3214

By: Lawson and **Munson** of the
House

and

Stanley of the Senate

10 COMMITTEE SUBSTITUTE

11 An Act relating to children; amending 10A O.S. 2011,
12 Sections 2-2-403, 2-3-101, as last amended by Section
13 2, Chapter 234, O.S.L. 2016, 2-5-204, as amended by
14 Section 4, Chapter 155, O.S.L. 2018 and 2-5-209, as
15 amended by Section 9, Chapter 155, O.S.L. 2018 (10A
16 O.S. Supp. 2019, Sections 2-3-101, 2-5-204 and 2-5-
17 209), which relate to detention of children in adult
18 facilities; providing for incarceration of juveniles
19 sentenced as adults; prohibiting detainment of
20 children in adult facilities; providing exceptions;
21 requiring hearing and certain findings before
22 confinement of child in adult facility; establishing
23 factors for court to consider; affording certain
24 rights and protections to child; providing for
detention of youthful offenders; and providing an
effective date.

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

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

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

12 Consideration shall be given to:

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

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

20 3. The sophistication and maturity of the juvenile and
21 capability of the juvenile of distinguishing right from wrong as
22 determined by consideration of a psychological evaluation of the
23 juvenile, home, environmental situation, emotional attitude and
24 pattern of living;

1 4. The record and previous history of the accused person,
2 including previous contacts with community agencies, law enforcement
3 agencies, schools, juvenile or criminal courts and other
4 jurisdictions, prior periods of probation or prior commitments to
5 juvenile institutions;

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

7 6. The likelihood of reasonable rehabilitation of the juvenile
8 if the juvenile is found to have committed the alleged offense, by
9 the use of procedures and facilities currently available to the
10 juvenile court; and

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

13 After the investigation and hearing, the court may in its
14 discretion proceed with the juvenile proceeding, or it shall state
15 its reasons in writing and shall certify, based on clear and
16 convincing evidence, that the child shall be held accountable for
17 acts of the child as if the child were an adult and shall be held
18 for proper criminal proceedings for the specific offense charged, by
19 any other division of the court which would have trial jurisdiction
20 of the offense if committed by an adult. The juvenile proceeding
21 shall not be dismissed until the criminal proceeding has commenced
22 and if no criminal proceeding commences within thirty (30) days of
23 the date of the certification, unless stayed pending appeal, the
24

1 court shall proceed with the juvenile proceeding and the
2 certification shall lapse.

3 If not included in the original summons, notice of a hearing to
4 consider whether a child should be certified for trial as an adult
5 shall be given to all persons who are required to be served with a
6 summons at the commencement of a juvenile proceeding, but
7 publication in a newspaper when the address of a person is unknown
8 is not required. The purpose of the hearing shall be clearly stated
9 in the notice.

10 B. Prior to the entry of any order of certification, any child
11 in custody shall have the same right to be released upon bail as
12 would an adult under the same circumstances. Subsequent to the
13 entry of an order that a child stand trial as an adult, the child
14 shall have all the statutory and constitutional rights and
15 protections of an adult accused of a crime ~~but shall, while awaiting~~
16 ~~trial and for the duration of the trial, be detained in a jail cell~~
17 ~~or ward entirely separate from prisoners who are eighteen (18) years~~
18 ~~of age or over.~~ Upon conviction, the juvenile may be incarcerated
19 with the adult population in an adult jail, adult lockup, adult
20 detention or other adult facility if that facility is licensed by
21 the Office of Juvenile Affairs to detain children under eighteen
22 (18) years of age while the person is awaiting housing by the
23 Department of Corrections. If, prior to the entry of any order of
24 certification, the child becomes eighteen (18) years of age, the

1 child may be detained in a county jail or released on bail. If a
2 child is certified to stand trial as an adult, the court shall make
3 every effort to avoid duplication of the adult preliminary hearing
4 and the prosecutorial hearing in the juvenile certification process.
5 The parties may jointly stipulate to the court that the record for
6 the prosecutorial merit hearing in the juvenile proceeding be used
7 for all or part of the preliminary hearing.

8 C. Any child who has been certified to stand trial as an adult
9 pursuant to any order entered by any competent court of this state
10 or any other state shall be tried as an adult in all subsequent
11 criminal prosecutions, and shall not be subject to the jurisdiction
12 of the juvenile court or be eligible to be tried as a youthful
13 offender in any further proceedings.

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

18 SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-3-101, as
19 last amended by Section 2, Chapter 234, O.S.L. 2016 (10A O.S. Supp.
20 2019, Section 2-3-101), is amended to read as follows:

21 Section 2-3-101. A. When a child is taken into custody
22 pursuant to the provisions of the Oklahoma Juvenile Code, the child
23 shall be detained only if it is necessary to assure the appearance
24

1 of the child in court or for the protection of the child or the
2 public.

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

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

1 child shall be present at the hearing on the
2 application for extension unless, as authorized and
3 approved by the court, the attorney for the child is
4 present at the hearing and the child is available to
5 participate in the hearing via telephone conference
6 communication. For the purpose of this paragraph,
7 "telephone conference communication" means use of a
8 telephone device that allows all parties, including
9 the child, to hear and be heard by the other parties
10 at the hearing. After the hearing, the court may
11 order continued detention in a juvenile detention
12 center, may order the child detained in an alternative
13 to secure detention or may order the release of the
14 child from detention.

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

22 3. Except as otherwise authorized by this section a child who
23 has been taken into custody as a deprived child, a child in need of
24 supervision, or who appears to be a minor in need of treatment, may

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

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

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

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

17 3. The child is seriously assaultive or destructive towards
18 others or self;

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

22 a. is on probation or parole on a prior delinquent
23 offense,

24 b. is on preadjudicatory community supervision, or

1 c. is currently on release status on a prior delinquent
2 offense;

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

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

7 a. the child is absent from court-ordered placement
8 without approval by the court,

9 b. the child is absent from designated placement by the
10 Office of Juvenile Affairs without approval by the
11 Office of Juvenile Affairs,

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

14 d. the child is subject to an administrative transfer or
15 parole revocation proceeding.

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

21 D. Priority shall be given to the use of juvenile detention
22 facilities for the detention of juvenile offenders through
23 provisions requiring the removal from detention of a juvenile with a
24 lower priority status if an empty detention bed is not available at

1 the time of referral of a juvenile with a higher priority status and
2 if the juvenile with a higher priority status would be more of a
3 danger to the public than the juvenile with the lower priority
4 status.

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

10 1. Any child who is at least fifteen (15) years of age who is
11 charged with murder in the first degree may be detained in an adult
12 jail, adult lockup, adult detention or other adult facility only
13 after a hearing in which the child is provided representation and a
14 written court order stating that it is in the interest of justice
15 that the child be placed in an adult jail, adult lockup, adult
16 detention or other adult facility and if that facility is licensed
17 by the Office of Juvenile Affairs to detain children under eighteen
18 (18) years of age.

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

24 a. the age of the child,

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

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

- a. the court shall hold a hearing not less frequently
than once every thirty (30) days, or in the case of a
rural jurisdiction, which is any jurisdiction not
located in a metropolitan statistical area, as defined
by the United States Office of Management and Budget,
not less frequently than once every forty-five (45)
days, to review whether it is still in the interest of
justice to permit the juvenile to be so held, and

1 b. the child shall not be held in any adult jail or
2 lockup for adults for more than one hundred eighty
3 (180) days, unless the court, in writing, determines
4 there is good cause for an extension or the child
5 expressly waives this limitation.

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

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

14 2. Adult jails, adult lockups, adult detentions or other adult
15 facilities shall process requests for visits and allow approved
16 visitors contact visits with the child within five (5) business days
17 of the request.

18 G. 1. Except as otherwise provided in this section, no child
19 shall be placed in secure detention in a an adult jail, adult
20 lockup, or other adult detention or other adult facility unless:

21 a. the child is detained for the commission of a crime
22 that would constitute a felony if committed by an
23 adult, and

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

1 ~~e. the initial court appearance of the child is scheduled~~
2 ~~within twenty-four (24) hours after being taken into~~
3 ~~custody, excluding weekends and holidays, and~~

4 ~~d. the court of jurisdiction is outside of the Standard~~
5 ~~Metropolitan Statistical Area as defined by the Bureau~~
6 ~~of Census, and~~

7 ~~e. there is no existing acceptable alternative placement~~
8 ~~for the child, and~~

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

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

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

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

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

9 Specialized services staff, such as cooks,
10 bookkeepers, and medical professionals who are not
11 normally in contact with detainees or whose infrequent
12 contacts occur under conditions of separation of
13 juveniles and adults can serve both.

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

1 a. The time limitations for holding a child in a jail for
2 the purposes of identification, processing or
3 arranging transfer established by this section shall
4 not include the actual travel time required for
5 transporting a child from a jail to a juvenile
6 detention facility or alternative to secure detention.

7 b. Whenever the time limitations established by this
8 subsection are exceeded, this circumstance shall not
9 constitute a defense in a subsequent delinquency or
10 criminal proceeding.

11 3. Nothing in this section shall preclude detaining in a county
12 jail or other adult detention facility an eighteen-year-old charged
13 in a juvenile petition for whom certification to stand trial as an
14 adult is prayed. However, if no certification motion is filed, the
15 eighteen-year-old may remain in a juvenile detention facility as
16 long as secure detention is required.

17 4. Nothing in this section shall preclude detaining in a county
18 jail or other adult detention facility a person provided for in
19 Section 2-3-102 of this title if written or electronically
20 transmitted confirmation is received from the state seeking return
21 of the individual that the person is a person provided for in
22 Section 2-3-102 of this title and if, during the time of detention,
23 the person is detained in a facility meeting the requirements of
24 Section 2-3-103 of this title.

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

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

9 b. there is a reasonable belief that a felony has been
10 committed by the person,

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

14 d. there is no juvenile detention facility that has space
15 available for the person and that is within thirty
16 (30) miles of the jail, police station, or law
17 enforcement office in which the person is to be
18 detained, and

19 e. during the time of detention the person is detained in
20 a facility meeting the requirements of subparagraph g
21 of paragraph 1 of this subsection.

22 The time limitation provided for in this paragraph shall include the
23 time the person is detained prior to the issuance of the court
24 order.

1 The time limitation provided for in this paragraph shall not include
2 the actual travel time required for transporting the person to the
3 jail, police station, or similar law enforcement office. If the
4 time limitation established by this paragraph is exceeded, this
5 circumstance shall not constitute a defense in any subsequent
6 delinquency or criminal proceeding.

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

12 ~~G.~~ I. Any juvenile detention facility shall be available for
13 use by any eligible Indian child as that term is defined by the
14 Oklahoma Indian Child Welfare Act, providing that the use of the
15 juvenile detention facility meets the requirements of the Oklahoma
16 Juvenile Code. The Indian tribe may contract with any juvenile
17 detention facility for the providing of detention services.

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

21 ~~I.~~ K. Whenever a juvenile is placed in any adult jail, adult
22 lockup, ~~or other~~ adult detention or other adult facility, the Office
23 of Juvenile Affairs shall have access to all facilities which detain
24 such juveniles and shall have access to any data regarding such

1 juveniles. The Office of Juvenile Affairs shall have access to all
2 adult jails, adult lockups, adult detentions or other adult
3 facilities in this state, including all data maintained by such
4 facilities, to assure compliance with this section. The Board of
5 Juvenile Affairs shall promulgate rules as necessary to implement
6 the provisions of this section.

7 SECTION 3. AMENDATORY 10A O.S. 2011, Section 2-5-204, as
8 amended by Section 4, Chapter 155, O.S.L. 2018 (10A O.S. Supp. 2019,
9 Section 2-5-204), is amended to read as follows:

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

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

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

8 D. All youthful offender court records for a person who is
9 certified to stand trial as an adult or youthful offender shall be
10 considered adult records and shall not be subject to the provisions
11 of Chapter 6 of the Oklahoma Juvenile Code; provided, however, all
12 reports, evaluations, motions, records, exhibits or documents
13 regarding the educational history, mental health or medical
14 treatment or condition of the offender that are submitted to the
15 court or admitted into evidence during the hearing on the motion for
16 certification as a youthful offender to the juvenile system or
17 motion for imposition of an adult sentence shall be confidential and
18 shall be filed or admitted under seal, except that such records
19 shall be provided to the Office of Juvenile Affairs. Any testimony
20 regarding the reports, evaluations, motions, records, exhibits or
21 documents shall be given in camera and shall not be open to the
22 general public; provided, all persons having a direct interest in
23 the case as provided in paragraph 1 of subsection A of Section 2-2-
24 402 of this title shall be allowed to be present during the

1 testimony but shall be admonished not to discuss the testimony
2 following the hearing. All reports, evaluations, motions, records,
3 exhibits or documents shall be released from under seal by order of
4 the court if the youthful offender is sentenced to the custody or
5 supervision of the Department of Corrections by the court pursuant
6 to paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of
7 subsection B of Section 2-5-210 of this title or if the juvenile or
8 youthful offender is later charged as an adult with a felony crime.

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

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

21 G. Upon certification for the imposition of an adult sentence,
22 a verdict of guilty or entry of a plea of guilty or nolo contendere
23 by a youthful offender who has been certified for the imposition of
24 an adult sentence as provided by Section 2-5-208 of this title, the

1 person may be detained ~~as an adult and, if incarcerated, may be~~
2 ~~incarcerated with the adult population~~ in an adult jail, adult
3 lockup, adult detention or other adult facility if that facility is
4 licensed by the Office of Juvenile Affairs to detain children under
5 eighteen (18) years of age while the person is awaiting housing by
6 the Department of Corrections.

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

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

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

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

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

4 SECTION 4. AMENDATORY 10A O.S. 2011, Section 2-5-209, as
5 amended by Section 9, Chapter 155, O.S.L. 2018 (10A O.S. Supp. 2019,
6 Section 2-5-209), is amended to read as follows:

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

10 1. A youthful offender presentence investigation shall be
11 conducted unless waived by the youthful offender with approval of
12 the court or unless an investigation is conducted pursuant to
13 subsection C of Section 2-5-208 of this title. All reports,
14 evaluations, motions, records, exhibits or documents regarding the
15 educational history, mental health or medical treatment or condition
16 of the offender that are submitted to the court or admitted into
17 evidence during the hearing on the motion for certification of the
18 accused youthful offender to the juvenile system or motion for
19 imposition of an adult sentence are confidential and shall be filed
20 or admitted under seal, except that such records shall be provided
21 to the Office of Juvenile Affairs. Any testimony regarding the
22 reports, evaluations, motions, records, exhibits or documents shall
23 be given in camera and shall not be open to the general public;
24 provided, all persons having a direct interest in the case as

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

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

- 15 a. whether the offense was committed in an aggressive,
16 violent, premeditated or willful manner,
- 17 b. whether the offense was against persons and, if
18 personal injury resulted, the degree of personal
19 injury,
- 20 c. the record and past history of the person, including
21 previous contacts with law enforcement agencies and
22 juvenile or criminal courts, prior periods of
23 probation and commitments to juvenile institutions,

- 1 d. the sophistication and maturity of the person and the
2 capability of distinguishing right from wrong as
3 determined by consideration of the psychological
4 evaluation, home, environmental situation, emotional
5 attitude and pattern of living of the person,
6 e. the prospects for adequate protection of the public if
7 the person is processed through the youthful offender
8 system or the juvenile system,
9 f. the reasonable likelihood of rehabilitation of the
10 person if found to have committed the offense, by the
11 use of procedures and facilities currently available
12 to the juvenile, and
13 g. whether the offense occurred while the person was
14 escaping or on escape status from an institution for
15 youthful offenders or delinquent children.

16 B. 1. After the hearing and consideration of the report of the
17 presentence investigation, the court shall impose sentence as a
18 youthful offender, and such youthful offender shall be subject to
19 the same type of sentencing procedures and duration of sentence,
20 except for capital offenses, including suspension or deferment, as
21 an adult convicted of a felony offense, except that any sentence
22 imposed upon the youthful offender shall be served in the custody or
23 under the supervision of the Office of Juvenile Affairs until the
24 expiration of the sentence, the youthful offender is discharged, or

1 the youthful offender reaches eighteen (18) years of age, whichever
2 first occurs. If an individual sentenced as a youthful offender
3 attains eighteen (18) years of age prior to the expiration of the
4 sentence, such individual shall be returned to the sentencing court.
5 At that time, the sentencing court shall make one of the following
6 determinations:

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

22 2. The sentence imposed shall not exceed the maximum sentence
23 already imposed in the originating sentence.
24

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

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

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

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

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

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

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

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

C. A youthful offender who is ~~seventeen (17) or~~ eighteen (18) years of age or older and who has been sentenced to the custody of the Office of Juvenile Affairs may be detained in a county jail pending placement in an Office of Juvenile Affairs facility ~~provided the county jail meets the jail standards promulgated by the~~

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

4 SECTION 5. This act shall become effective November 1, 2020.

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6 COMMITTEE REPORT BY: COMMITTEE ON CHILDREN, YOUTH AND FAMILY
7 SERVICES, dated 02/13/2020 - DO PASS, As Amended and Coauthored.
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