

1 ENGROSSED SENATE  
2 BILL NO. 224

By: Griffin of the Senate

3 and

4 Kannady of the House

5  
6 An Act relating to youthful offenders; amending 10A  
7 O.S. 2011, Sections 2-2-301, as amended by Section 9,  
8 Chapter 404, O.S.L. 2013, 2-2-501, as last amended by  
9 Section 1, Chapter 362, O.S.L. 2014, 2-5-204, 2-5-  
10 205, 2-5-206, 2-5-207, 2-5-208 and 2-5-209 (10A O.S.  
11 Supp. 2017, Sections 2-2-301 and 2-2-501) which  
12 relate to court proceedings, certification,  
13 applicability and sentencing; requiring appointment  
14 of an attorney under certain circumstances; applying  
15 certain procedural requirements for attorney of  
16 child; requiring confidentiality of certain records;  
17 providing exceptions; authorizing release of certain  
18 records under specified circumstances; modifying time  
19 limitations for preliminary hearing under certain  
20 circumstances; increasing maximum age for certain  
21 offender status; clarifying applicability of certain  
22 fee; granting jurisdiction over certain offenders;  
23 specifying certain orders as appealable; repealing  
24 10A O.S. 2011, Section 2-5-101, which relates to  
juveniles of certain ages to be considered adults for  
certain offenses committed; updating language; and  
providing an effective date.

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

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

Section 2-2-301. A. No information gained by a custodial  
interrogation of a youthful offender under sixteen (16) years of age

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

1 action in any significant way by a law enforcement officer, employee  
2 of the court, or employee of the Office. Custodial interrogation  
3 shall conform with all requirements for interrogation of adult  
4 criminal offenders. The term "custodial interrogation" shall not be  
5 deemed to mean questioning of a youthful offender or child by a  
6 public school administrator or teacher, so long as such questioning  
7 is not being conducted on behalf of a law enforcement officer, an  
8 employee of the court or an employee of the Office. Any information  
9 gained from noncustodial questioning of a child or youthful offender  
10 by a public school administrator or teacher concerning a wrongful  
11 act committed on public school property shall be admissible into  
12 evidence against the youthful offender or child.

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

16 C. If the youthful offender or child is not otherwise  
17 represented by counsel, whenever a petition is filed pursuant to the  
18 provisions of Section 2-2-104 or Section 2-5-201 et seq. of this  
19 title, the court shall appoint an attorney, who shall not be a  
20 district attorney, for the youthful offender or child regardless of  
21 any attempted waiver by the parent or other legal custodian of the  
22 youthful offender or child of the right of the youthful offender or  
23 child to be represented by counsel. The youthful offender or child  
24 shall be represented by counsel at every hearing or review through

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

20 D. In all cases of juvenile delinquency, adult certification,  
21 reverse certification, or youthful offender proceedings and appeals,  
22 or any other proceedings and appeals pursuant to the Oklahoma  
23 Juvenile Code, except mental health or in-need-of-supervision  
24 proceedings and appeals, and any other juvenile proceedings that are

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

18 E. Counsel for the child shall advise the child and advocate  
19 the expressed wishes of the child, as much as reasonably possible,  
20 under the same ethical obligations as if the client were an adult.  
21 Upon motion by the state, the child, the attorney for the child, or  
22 a parent or legal custodian of the child, the court shall appoint a  
23 guardian ad litem.

24

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

12 SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-2-501, as  
13 last amended by Section 1, Chapter 362, O.S.L. 2014 (10A O.S. Supp.  
14 2017, Section 2-2-501), is amended to read as follows:

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

23 B. Before making an order of disposition, the court shall  
24 advise the district attorney, the attorney of the child, the

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

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

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

21 SECTION 3. AMENDATORY 10A O.S. 2011, Section 2-5-204, is  
22 amended to read as follows:

23 Section 2-5-204. A. A child who is arrested for an offense  
24 pursuant to subsection A or B of Section 2-5-206 of this title, or

1 who is certified as a youthful offender pursuant to Section 2-5-205  
2 of this title, shall be charged by information in the same manner as  
3 provided for adults.

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

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

20 D. All youthful offender court records for ~~such~~ a person who is  
21 certified to stand trial as an adult or youthful offender shall be  
22 considered adult records and shall not be subject to the provisions  
23 of Chapter 6 of the Oklahoma Juvenile Code; provided, however, all  
24 reports, evaluations, motions, records, exhibits or documents that



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

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

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

24

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

7       ~~G.~~ H. A child or youthful offender shall be tried as an adult  
8 in 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       ~~H.~~ I. Except as otherwise provided in the Youthful Offender  
21 Act, a 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 2-5-205, is  
5 amended to read as follows:

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

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

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

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

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

1 returned for any reason other than refusal of the addressee to  
2 accept delivery, after a thorough search of all reasonably available  
3 sources to ascertain the whereabouts of a custodial parent, guardian  
4 or next friend has been conducted, the court may order that notice  
5 of the hearing be given by publication one time in a newspaper of  
6 general circulation in the county. In addition, the court may order  
7 other means of service of notice that the court deems advisable or  
8 in the interests of justice.

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

13 D. 1. The accused person shall file any motions for  
14 certification as a youthful offender or a juvenile before the start  
15 of the criminal preliminary hearing. If both a motion for  
16 certification as a youthful offender and a motion for certification  
17 as a juvenile are filed, they shall both be heard at the same time.  
18 No motion for certification as a youthful offender or certification  
19 as a juvenile may be filed after the time specified in this  
20 subsection. Upon the filing of such motion, the complete juvenile  
21 record of the accused shall be made available to the district  
22 attorney and the accused person. All reports, evaluations, motions,  
23 records, exhibits or documents that are submitted to the court or  
24 admitted into evidence during the hearing on the motion for

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

11       2. The court shall commence a preliminary hearing within ninety  
12 (90) days of the filing of the information, pursuant to Section 258  
13 of Title 22 of the Oklahoma Statutes, to determine whether the crime  
14 was committed and whether there is probable cause to believe the  
15 accused person committed a crime. If the preliminary hearing is not  
16 commenced within ninety (90) days of the date the accused person is  
17 charged, the district court shall hold a hearing to determine the  
18 reasons for delay utilizing the procedure set out in Section 812.2  
19 of Title 22 of the Oklahoma Statutes, to ensure the preliminary  
20 hearing is expedited. If the whereabouts of the accused are unknown  
21 at the time of the filing of the information or if the accused is a  
22 fugitive, the State of Oklahoma shall make reasonable efforts to  
23 locate the accused in order to commence the proceedings. An accused  
24 who flees the jurisdiction of the court or purposely avoids

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

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

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

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

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

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

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

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

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

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

21           The court, in its decision on a motion for certification as a  
22 youthful offender or juvenile, shall detail findings of fact and  
23 conclusions of law to each of the above considerations, and shall  
24



1 state that the court has considered each of the guidelines in  
2 reaching its decision.

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

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

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

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

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

- 20 1. Murder in the second degree;
- 21 2. Kidnapping;
- 22 3. Manslaughter in the first degree;
- 23 4. Robbery with a dangerous weapon or a firearm or attempt  
24 thereof;

- 1 5. Robbery in the first degree or attempt thereof;
- 2 6. Rape in the first degree or attempt thereof;
- 3 7. Rape by instrumentation or attempt thereof;
- 4 8. Forcible sodomy;
- 5 9. Lewd molestation;
- 6 10. Arson in the first degree or attempt thereof; or
- 7 11. Any offense in violation of Section 652 of Title 21 of the
- 8 Oklahoma Statutes,
- 9 shall be held accountable for such acts as a youthful offender.
- 10 B. Any person sixteen (16) or seventeen (17) years of age who
- 11 is charged with:
  - 12 1. Burglary in the first degree or attempted burglary in the
  - 13 first degree;
  - 14 2. Battery or assault and battery on a state employee or
  - 15 contractor while in the custody or supervision of the Office of
  - 16 Juvenile Affairs;
  - 17 3. Aggravated assault and battery of a police officer;
  - 18 4. Intimidating a witness;
  - 19 5. Trafficking in or manufacturing illegal drugs;
  - 20 6. Assault or assault and battery with a deadly weapon;
  - 21 7. Maiming;
  - 22 8. Residential burglary in the second degree after two or more
  - 23 adjudications that are separated in time for delinquency for
  - 24

1 committing burglary in the first degree or residential burglary in  
2 the second degree;

3 9. Rape in the second degree; or

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

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

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

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

20 3. When personal service of a custodial parent, guardian or  
21 next friend of the alleged youthful offender cannot be effected,  
22 service may be made by certified mail to the last-known address of  
23 the person, requesting a return receipt from the addressee only. If  
24 delivery is refused, notice may be given by mailing the warrant and

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

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

18 E. The court shall commence a preliminary hearing within ninety  
19 (90) days of the filing of the information pursuant to Section 258  
20 of Title 22 of the Oklahoma Statutes, to determine whether the crime  
21 was committed and whether there is probable cause to believe the  
22 accused person committed the crime. If the preliminary hearing is  
23 not commenced within ninety (90) days, the state shall be prohibited  
24 from seeking an adult sentence unless the ninety-day requirement is

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

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

21 a. upon the filing of such motion, the complete juvenile  
22 record of the accused shall be made available to the  
23 district attorney and the accused person,  
24

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

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

10          3.    All reports, evaluations, motions, records, exhibits or  
11 documents that are submitted to the court or admitted into evidence  
12 during the hearing on the motion for certification of the accused  
13 youthful offender to the juvenile system or motion for imposition of  
14 an adult sentence are confidential and shall be filed or admitted  
15 under seal, except that such records shall be provided to the Office  
16 of Juvenile Affairs. The 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 either paragraph 1 of subsection B of Section 2-5-209 or  
21 paragraph 5 of subsection B of Section 2-5-210 of this title.

22          4.    The court shall rule on the certification motion before  
23                ruling on whether to bind the accused over for trial. When ruling  
24                on the certification motion, the court shall give consideration to

1 the following guidelines with the greatest weight given to  
2 subparagraphs a, b and c:

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

5 b. whether the offense was against persons, and if  
6 personal injury resulted, the degree of personal  
7 injury,

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

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

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

22 f. the reasonable likelihood of rehabilitation of the  
23 accused person if the accused is found to have  
24 committed the alleged offense, by the use of

1 procedures and facilities currently available to the  
2 juvenile court, and

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

7 ~~4.~~ 5. In its decision on the motion for certification as an  
8 alleged juvenile delinquent, the court shall detail findings of fact  
9 and conclusions of law to each of the above considerations and shall  
10 state that the court has considered each of the guidelines in  
11 reaching its decision.

12 ~~5.~~ 6. An order certifying a person or denying such  
13 certification to the juvenile justice system shall be a final order,  
14 appealable when entered.

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

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

22 Section 2-5-207. It is the intent of the Legislature to fully  
23 utilize the Youthful Offender Act as a means to protect the public  
24 while rehabilitating and holding youth accountable for serious



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

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

23 Section 2-5-208. A. Whenever the district attorney believes  
24 that there is good cause to believe that a person charged as a

1 youthful offender would not reasonably complete a plan of  
2 rehabilitation or the public would not be adequately protected if  
3 the person were to be sentenced as a youthful offender, and should  
4 receive an adult sentence, the district attorney shall file a motion  
5 for consideration of the imposition of the sentence as for an adult  
6 if the person is convicted:

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

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

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

24

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

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

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

1 periods of probation and commitments to juvenile  
2 institutions,

3 d. the sophistication and maturity of the accused person  
4 and the capability of distinguishing right from wrong  
5 as determined by consideration of the psychological  
6 evaluation, home, environmental situation, emotional  
7 attitude and pattern of living of the accused person,

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

11 f. the reasonable likelihood of rehabilitation of the  
12 accused person if the accused person is found to have  
13 committed the alleged offense, by the use of  
14 procedures and facilities currently available to the  
15 juvenile court, and

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

19 D. After the hearing and consideration of the report of the  
20 investigation, the court shall certify the person as eligible for  
21 the imposition of an adult sentence only if it finds by clear and  
22 convincing evidence that there is good cause to believe that the  
23 accused person would not reasonably complete a plan of  
24

1 rehabilitation or that the public would not be adequately protected  
2 if the person were to be sentenced as a youthful offender.

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

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

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

22 G. Upon a verdict of guilty or a plea of guilty or nolo  
23 contendere, the court may order the person to pay a fee to the  
24 Office of Juvenile Affairs of not less than Twenty-five Dollars

1 (\$25.00), nor more than Five Hundred Dollars (\$500.00), for the  
2 presentence or certification investigation. In hardship cases, the  
3 court may waive the fee or set the amount of the fee and establish a  
4 payment schedule.

5 SECTION 8. AMENDATORY 10A O.S. 2011, Section 2-5-209, is  
6 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 that are  
15 submitted to the court or admitted into evidence during the hearing  
16 on the motion for certification of the accused youthful offender to  
17 the juvenile system or motion for imposition of an adult sentence  
18 are confidential and shall be filed or admitted under seal, except  
19 that such records shall be provided to the Office of Juvenile  
20 Affairs. The reports, evaluations, motions, records, exhibits or  
21 documents shall be released from under seal by order of the court if  
22 the youthful offender is sentenced to the custody or supervision of  
23 the Department of Corrections by the court pursuant to paragraph 1  
24 of subsection B of Section 2-5-209 or paragraph 5 of subsection B of

1 Section 2-5-210 of this title. Any presentence investigation  
2 required by this section shall be conducted by the Office of  
3 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 of age and ~~five (5)~~ six (6) months. 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 ~~a~~ the court has extended jurisdiction of the youthful  
2 offender ~~has attained eighteen (18) years of age but less than~~  
3 ~~eighteen (18) years of age and five (5) months prior to sentencing,~~  
4 ~~that individual shall be returned to the sentencing court upon~~  
5 ~~attaining the age of eighteen (18) years and five (5) months if that~~  
6 ~~individual has been sentenced to a period of placement or treatment~~  
7 ~~with the Office of Juvenile Affairs~~ until nineteen (19) years of  
8 age, the youthful offender shall remain in custody or under the  
9 supervision of the Office of Juvenile Affairs until the youthful  
10 offender has been discharged or sentenced by the court or until the  
11 youthful offender's nineteenth birthday, at which time the youthful  
12 offender shall be returned to the court for final disposition of the  
13 youthful offender's case. The court shall have the same  
14 dispositional options as provided in subparagraphs b, c and d of  
15 paragraph 1 of this subsection.

16        ~~4.~~ 5. Any period of probation required by the sentencing court  
17 to be served shall be supervised by:

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

24

1       ~~5.~~ 6. In addition to or in lieu of the placement of the  
2 youthful offender in the custody of or under the supervision of the  
3 Office of Juvenile Affairs, the court may issue orders with regard  
4 to the youthful offender as provided by law for the disposition of  
5 an adjudicated juvenile delinquent as long as the age of the  
6 youthful offender does not exceed ~~eighteen (18)~~ nineteen (19) years  
7 ~~and five (5) months.~~

8       ~~6.~~ 7. It is the intent of the Oklahoma Legislature that  
9 youthful offenders be held insofar as is practical separate from the  
10 juvenile delinquent population.

11       ~~7.~~ 8. The Office of Juvenile Affairs may make recommendations  
12 to the court concerning the disposition of the youthful offender.

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

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

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

