

1 **SENATE FLOOR VERSION**

2 February 24, 2015

3 **AS AMENDED**

4 SENATE BILL NO. 410

By: Brooks of the Senate

and

Johnson of the House

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8 **[juvenile offenses - youthful offender guidelines -
effective date]**
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11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-5-206, is
13 amended to read as follows:

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

16 1. Murder in the second degree;

17 2. Kidnapping;

18 3. Manslaughter in the first degree;

19 4. Robbery with a dangerous weapon or a firearm or attempt

20 thereof;

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

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

23 7. Rape by instrumentation or attempt thereof;

24 8. Forcible sodomy;

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

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

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

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

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

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

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

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

15 E. The court shall commence a preliminary hearing within ninety
16 (90) days of the filing of the information pursuant to Section 258
17 of Title 22 of the Oklahoma Statutes, to determine whether the crime
18 was committed and whether there is probable cause to believe the
19 accused person committed the crime. If the preliminary hearing is
20 not commenced within ninety (90) days, the state shall be prohibited
21 from seeking an adult sentence unless the ninety-day requirement is
22 waived by the defendant. If the whereabouts of the accused are
23 unknown at the time of the filing of the information or if the
24 accused is a fugitive, the State of Oklahoma shall make reasonable

1 efforts to locate the accused in order to commence the proceedings.
2 An accused who flees the jurisdiction of the court or purposely
3 avoids apprehension for the charges, waives the right to have the
4 preliminary hearing commenced within ninety (90) days of the filing
5 of the information. An accused who fails to cooperate with
6 providing information in locating the accused parent, guardian, or
7 next friend for purpose of notice waives the right to have the
8 preliminary hearing commence within ninety (90) days of the filing
9 of the information.

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

- 13 a. upon the filing of such motion, the complete juvenile
14 record of the accused shall be made available to the
15 district attorney and the accused person,
16 b. at the conclusion of the state's case at the criminal
17 preliminary hearing, the accused person may offer
18 evidence to support the motion for certification as a
19 child.

20 2. If no motion to certify the accused person to the juvenile
21 justice system has been filed, at the conclusion of the criminal
22 preliminary hearing the court may on its own motion hold a hearing
23 on the matter of the certification of the accused youthful offender
24 to the juvenile system.

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

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

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

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

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

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

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

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

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

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

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

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SECTION 2. This act shall become effective November 1, 2015.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
February 24, 2015 - DO PASS AS AMENDED

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