

1 juvenile as provided by this section, unless the person is subject
2 to the provisions of subsection H of Section 2-5-204 of this title.

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

15 C. 1. Upon the filing of an adult criminal information against
16 such accused person, a warrant shall be issued which shall set forth
17 the rights of the accused person, and the rights of the parents,
18 guardian or next friend of the accused person to be present at the
19 preliminary hearing, to have an attorney present and to make
20 application for certification of such accused person as a youthful
21 offender to the district court for the purpose of prosecution as a
22 youthful offender.

23 2. The warrant shall be personally served together with a
24 certified copy of the information on the accused person and on a

1 custodial parent, guardian or next friend of the accused person.
2 The court may inquire of the accused as to the whereabouts of his or
3 her parents, guardian, or next friend in order to avoid unnecessary
4 delay in the proceedings.

5 3. When personal service of a custodial parent, guardian or
6 next friend of the accused person cannot be effected, service may be
7 made by certified mail to such person's last-known address,
8 requesting a return receipt from the addressee only. If delivery is
9 refused, notice may be given by mailing the warrant and a copy of
10 the information on the accused person by regular first-class mail to
11 the address where the person to be notified refused delivery of the
12 notice sent by certified mail. Where the address of a custodial
13 parent, guardian or next friend is not known, or if the mailed
14 warrant and copy of the information on the accused person is
15 returned for any reason other than refusal of the addressee to
16 accept delivery, after a thorough search of all reasonably available
17 sources to ascertain the whereabouts of a custodial parent, guardian
18 or next friend has been conducted, the court may order that notice
19 of the hearing be given by publication one time in a newspaper of
20 general circulation in the county. In addition, the court may order
21 other means of service of notice that the court deems advisable or
22 in the interests of justice.

23 4. Before service by publication is ordered, the court shall
24 conduct an inquiry to determine whether a thorough search has been

1 made of all reasonably available sources to ascertain the
2 whereabouts of any party for whom notice by publication is sought.

3 D. 1. The accused person shall file any motions for
4 certification as a youthful offender or a juvenile before the start
5 of the criminal preliminary hearing. If both a motion for
6 certification as a youthful offender and a motion for certification
7 as a juvenile are filed, they shall both be heard at the same time.
8 No motion for certification as a youthful offender or certification
9 as a juvenile may be filed after the time specified in this
10 subsection. Upon the filing of such motion, the complete juvenile
11 record of the accused shall be made available to the district
12 attorney and the accused person. All reports, evaluations, motions,
13 records, exhibits or documents regarding the educational history,
14 mental health or medical treatment or condition of the offender that
15 are submitted to the court or admitted into evidence during the
16 hearing on the motion for certification as a 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. Any testimony regarding the reports, evaluations, motions,
21 records, exhibits or documents shall be given in camera and shall
22 not be open to the general public; provided, all persons having a
23 direct interest in the case as provided in paragraph 1 of subsection
24 A of Section 2-2-402 of this title shall be allowed to be present

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

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

1 preliminary hearing commenced within ninety (90) days of the filing
2 of the information. An accused who fails to cooperate with
3 providing information in locating the parents of the accused,
4 guardian, or next friend for purpose of notice waives the right to
5 have the preliminary hearing commence within ninety (90) days of the
6 filing of the information. If the preliminary hearing did not
7 commence within ninety (90) days from the filing of the information
8 due to the absence or inability to locate the accused, the
9 preliminary hearing shall commence within ninety (90) days after the
10 state has actual notice of the in-state location of the accused. If
11 the accused is found out of state, the court shall set the hearing
12 within ninety (90) days after the accused has been returned to the
13 State of Oklahoma.

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

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

3 2. Whether the offense was against persons, and, if personal
4 injury resulted, the degree of personal injury, and the statements
5 of the victim or victims;

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

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

14 5. The prospects for adequate protection of the public if the
15 accused person is processed through the youthful offender system or
16 the juvenile system;

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

21 7. Whether the offense occurred while the accused person was
22 escaping or on escape status from an institution for youthful
23 offenders or delinquent children.

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1 The court, in its decision on a motion for certification as a
2 youthful offender or juvenile, shall detail findings of fact and
3 conclusions of law to each of the above considerations, and shall
4 state that the court has considered each of the guidelines in
5 reaching its decision.

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

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

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

19 SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-5-206, as
20 amended by Section 6, Chapter 155, O.S.L. 2018 (10A O.S. Supp. 2020,
21 Section 2-5-206), is amended to read as follows:

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

- 24 1. Murder in the second degree;

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

1 7. Maiming;

2 8. Residential burglary in the second degree after two or more
3 adjudications that are separated in time for delinquency for
4 committing burglary in the first degree or residential burglary in
5 the second degree;

6 9. Rape in the second degree; or

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

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

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

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

23 3. When personal service of a custodial parent, guardian or
24 next friend of the alleged youthful offender cannot be effected,

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

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

21 E. The court shall commence a preliminary hearing within ninety
22 (90) days of the filing of the information pursuant to Section 258
23 of Title 22 of the Oklahoma Statutes, to determine whether the crime
24 was committed and whether there is probable cause to believe the

1 accused person committed the crime. If the preliminary hearing is
2 not commenced within ninety (90) days, the state shall be prohibited
3 from seeking an adult sentence unless the ninety-day requirement is
4 waived by the defendant. If the whereabouts of the accused are
5 unknown at the time of the filing of the information or if the
6 accused is a fugitive, the State of Oklahoma shall make reasonable
7 efforts to locate the accused in order to commence the proceedings.
8 An accused who flees the jurisdiction of the court or purposely
9 avoids apprehension for the charges, waives the right to have the
10 preliminary hearing commenced within ninety (90) days of the filing
11 of the information. If the preliminary hearing did not commence
12 within ninety (90) days from the filing of the information due to
13 the absence or inability to locate the accused, the preliminary
14 hearing shall commence within ninety (90) days after the state has
15 actual notice of the in-state location of the accused. If the
16 accused is found out of state, the court shall set the hearing
17 within ninety (90) days after the accused has been returned to the
18 State of Oklahoma. An accused who fails to cooperate with providing
19 information in locating the accused parent, guardian, or next friend
20 for purpose of notice waives the right to have the preliminary
21 hearing commence within ninety (90) days of the filing of the
22 information.

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

4 a. upon the filing of such motion, the complete juvenile
5 record of the accused shall be made available to the
6 district attorney and the accused person,

7 b. at the conclusion of the state's case at the criminal
8 preliminary hearing, the accused person may offer
9 evidence to support the motion for certification as a
10 child.

11 2. If no motion to certify the accused person to the juvenile
12 justice system has been filed, at the conclusion of the criminal
13 preliminary hearing the court may on its own motion hold a hearing
14 on the matter of the certification of the accused youthful offender
15 to the juvenile system.

16 3. All reports, evaluations, motions, records, exhibits or
17 documents regarding the educational history, mental health or
18 medical treatment or condition of the offender that are submitted to
19 the court or admitted into evidence during the hearing on the motion
20 for certification of the accused youthful offender to the juvenile
21 system or motion for imposition of an adult sentence are
22 confidential and shall be filed or admitted under seal, except that
23 such records shall be provided to the Office of Juvenile Affairs.
24 Any testimony regarding the reports, evaluations, motions, records,

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

14 4. The court shall rule on the certification motion before
15 ruling on whether to bind the accused over for trial. When ruling
16 on the certification motion, the court shall give consideration to
17 the following guidelines with the greatest weight given to
18 subparagraphs a, b and c:

- 19 a. whether the alleged offense was committed in an
20 aggressive, violent, premeditated or willful manner,
21 b. whether the offense was against persons, and if
22 personal injury resulted, the degree of personal
23 injury, and the statements of the victim or victims,
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- 1 c. the record and past history of the accused person,⁷
2 including previous contacts with law enforcement
3 agencies and juvenile or criminal courts, prior
4 periods of probation and commitments to juvenile
5 institutions,
- 6 d. the sophistication and maturity of the accused person
7 and the accused person's capability of distinguishing
8 right from wrong as determined by consideration of the
9 accused person's psychological evaluation, home,
10 environmental situation, emotional attitude and
11 pattern of living,
- 12 e. the prospects for adequate protection of the public if
13 the accused person is processed through the youthful
14 offender system or the juvenile system,
- 15 f. the reasonable likelihood of rehabilitation of the
16 accused person if the accused is found to have
17 committed the alleged offense, by the use of
18 procedures and facilities currently available to the
19 juvenile court, and
- 20 g. whether the offense occurred while the accused person
21 was escaping or in an escape status from an
22 institution for youthful offenders or juvenile
23 delinquents.
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1 5. In its decision on the motion for certification as an
2 alleged juvenile delinquent, the court shall detail findings of fact
3 and conclusions of law to each of the above considerations and shall
4 state that the court has considered each of the guidelines in
5 reaching its decision.

6 6. An order certifying a person or denying such certification
7 to the juvenile justice system shall be a final order, appealable
8 when entered.

9 G. Upon conviction, sentence may be imposed as a sentence for a
10 youthful offender as provided by Section 2-5-209 of this title. If
11 the youthful offender sentence is imposed as an adult sentence as
12 provided by Section 2-5-208 of this title, the convicted person may
13 be incarcerated with the adult population.

14 SECTION 3. This act shall become effective November 1, 2021.

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16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CRIMINAL, dated
17 03/24/2021 - DO PASS.

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