

An Act

ENROLLED SENATE
BILL NO. 423

By: Pugh of the Senate

and

George and Crosswhite Hader
of the House

An Act relating to children; amending 10A O.S. 2021, Section 2-5-205, as amended by Section 5, Chapter 375, O.S.L. 2022 (10A O.S. Supp. 2023, Section 2-5-205), which relates to certification as youthful offender or juvenile; modifying acts that shall cause certain persons to be held accountable as a youthful offender; and providing an effective date.

SUBJECT: Youthful offenders

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

SECTION 1. AMENDATORY 10A O.S. 2021, Section 2-5-205, as amended by Section 5, Chapter 375, O.S.L. 2022 (10A O.S. Supp. 2023, Section 2-5-205), is amended to read as follows:

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

B. Any person fifteen (15), sixteen (16) or seventeen (17) years of age who is charged with murder in the first degree shall be held accountable for his or her act as if the person was an adult and shall not be subject to the provisions of the Youthful Offender Act or the provisions of the Juvenile Code for certification as a

juvenile. The person shall have all the statutory rights and protections of an adult accused of a crime. All proceedings shall be as for a criminal action and the provisions of Title 22 of the Oklahoma Statutes shall apply. A person having been convicted as an adult pursuant to this paragraph shall be tried as an adult for every subsequent offense.

C. Any person fifteen (15), sixteen (16) or seventeen (17) years of age who is charged with:

1. Murder in the second degree;
2. Kidnapping or attempt thereof;
3. Manslaughter in the first degree;
4. Robbery with a dangerous weapon or a firearm or attempt thereof;
5. Robbery in the first degree or attempt thereof;
6. Robbery committed by two or more persons;
7. Rape by instrumentation or attempt thereof;
8. Forcible sodomy;
9. Lewd acts or proposals to a child under sixteen (16) years of age or any offense in violation of subsection A of Section 1123 of Title 21 of the Oklahoma Statutes;
10. Domestic abuse by strangulation;
11. Arson in the first degree or attempt thereof; ~~or~~
12. Any offense in violation of Section 652 of Title 21 of the Oklahoma Statutes; or
13. Eluding a peace officer in violation of subsection B or C of Section 540A of Title 21 of the Oklahoma Statutes,

shall be held accountable for such acts as a youthful offender; provided, the person may be certified as a juvenile or as an adult as provided by the provisions of the Youthful Offender Act.

D. At the sole discretion of the district attorney, any person fifteen (15), sixteen (16) or seventeen (17) years of age who is charged with rape in the first degree or attempt thereof may be held accountable for his or her act as if the person was an adult or as a youthful offender. When charged as an adult, the person shall have all the statutory rights and protections of an adult accused of a crime. All proceedings shall be as for a criminal action and the provisions of Title 22 of the Oklahoma Statutes shall apply. A person having been convicted as an adult pursuant to this subsection shall be tried as an adult for every subsequent offense. When charged as a youthful offender, the person shall be held accountable for such acts as a youthful offender; provided, the person may be certified as a juvenile or as an adult as provided by the Youthful Offender Act.

E. Any person sixteen (16) or seventeen (17) years of age who is charged with:

1. Burglary in the first degree or attempted burglary in the first degree;

2. Battery or assault and battery on a state employee or contractor while in the custody or supervision of the Office of Juvenile Affairs;

3. Aggravated assault and battery of a police officer;

4. Intimidating a witness;

5. Trafficking in or manufacturing illegal drugs;

6. Assault and battery with a deadly weapon;

7. Maiming;

8. Residential burglary in the second degree after two or more adjudications that are separated in time for delinquency for

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

9. Rape in the second degree; or

10. Use of a firearm while in commission of a felony,

may be held accountable for such acts as a youthful offender; provided, the person may be certified as a juvenile or as an adult as provided by the Youthful Offender Act.

F. 1. For any charges listed in Sections A, C, D, or E of this section, the district attorney may elect to file a petition alleging the person to be delinquent or may file an information charging the person as a youthful offender. The district attorney shall immediately notify the Office of Juvenile Affairs upon the filing of any youthful offender charges.

2. After an information has been filed charging a person as a youthful offender under Sections A, C, D, or E of this section, or as an adult under subsection B of this section, the district attorney may elect to amend or dismiss the information and refile any or all charges in a delinquent petition.

3. Upon the filing of an information, the person's complete juvenile record shall be made available to the district attorney and the person's attorney.

G. 1. Upon the filing of an information against a person, a warrant shall be issued which shall set forth the rights of the accused, and the rights of the parents, guardian, or next friend of the accused to be present at the preliminary hearing and to have an attorney.

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

3. When personal service of a custodial parent, guardian, or next friend of the accused cannot be completed, service may be made by certified mail to the person's last-known address, requesting a return receipt from the addressee only. If delivery is refused, notice may be given by mailing a copy of the accused's warrant information by regular first-class mail to the address where the person to be notified refused delivery of the notice sent by certified mail. Where the address of a custodial parent, guardian or next friend is not known, or if the mailed copy of the accused's warrant and information is returned for any reason other than refusal of the addressee to accept delivery, after a thorough search of all reasonably available sources to ascertain the whereabouts of a custodial parent, guardian, or next friend has been conducted, the court may order that notice of the hearing be given by publication one time in a newspaper of general circulation in the county. The court may also order other means of service of notice that the court deems advisable or in the interests of justice.

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

5. The person is presumed to be a youthful offender, and the proceedings shall continue under such presumption unless the court grants the person's motion for certification as a juvenile pursuant to Section ~~6~~ 2-5-206A of this ~~act~~ title or grants the district attorney's motion for imposition of an adult sentence pursuant to Section ~~7~~ 2-5-207A of this ~~act~~ title.

H. The court shall commence the preliminary hearing within ninety (90) days of the filing of the information, pursuant to Section 258 of Title 22 of the Oklahoma Statutes, to determine whether a crime was committed and if there is probable cause to believe the accused committed the crime. The requirement for the preliminary hearing to be held within ninety (90) days may be waived by the accused.

1. For a person charged under subsection A or B of Section 2-5-205 of this title, if the preliminary hearing is not commenced within ninety (90) days of the filing date of the information, the district court shall hold a hearing to determine the reasons for

delay utilizing the procedure set out in Section 812.2 of Title 22 of the Oklahoma Statutes, to ensure the preliminary hearing is expedited, unless the ninety-day requirement has been waived by the accused.

2. For a person charged under subsection C, D, or E of Section 2-5-205 of this title, if the preliminary hearing is not commenced within ninety (90) days of the filing of the information, the district attorney shall be prohibited from seeking an adult sentence unless the ninety-day requirement has been waived by the accused.

3. For an accused person charged under subsection A, B, C, D, or E of Section 2-5-205 of this title, if the whereabouts of the accused are unknown at the time of the filing of the information or if the accused is a fugitive, the State of Oklahoma shall make reasonable efforts to locate the accused in order to commence the proceedings. An accused who flees the jurisdiction of the court or purposely avoids apprehension for the charges, waives the right to have the preliminary hearing commenced within ninety (90) days of the filing of the information. If the preliminary hearing does not commence within ninety (90) days from the filing of the information due to the absence or inability to locate the accused, the preliminary hearing shall commence within ninety (90) days after the state has actual notice of the in-state location of the accused. If the accused is found out of state, the court shall set the hearing within ninety (90) days after the accused has been returned to the State of Oklahoma. An accused who fails to cooperate with providing information in locating his or her parent, guardian, or next friend for purposes of notice waives the right to have the preliminary hearing commence within ninety (90) days of the filing of the information.

I. At the conclusion of the state's case at the preliminary hearing, if the accused has filed a motion for certification as a juvenile pursuant to subsection A of this section, or if the district attorney has filed a motion for the imposition of an adult sentence pursuant to Section ~~7~~ 2-5-207A of this ~~act~~ title, both the accused and the district attorney may offer evidence in support or in opposition of the pending motion or motions.

J. The court shall rule on any properly filed motion for certification as a juvenile or motion for the imposition of an adult

sentence before ruling on whether to bind the accused over for trial.

SECTION 2. This act shall become effective November 1, 2024.

Passed the Senate the 21st day of May, 2024.

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of April, 2024.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____