

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 153

By: Young

AS INTRODUCED

An Act relating to sentencing of juveniles; amending 10A O.S. 2021, Section 2-5-204, as amended by Section 4, Chapter 375, O.S.L. 2022 (10A O.S. Supp. 2022, Section 2-5-204), which relates to treatment of child certified as adult or youthful offender in criminal proceedings; prohibiting imposition of certain terms of imprisonment for certain persons; updating statutory references; amending 22 O.S. 2021, Section 985.1, which relates to departure from mandatory minimum sentencing; requiring court to depart from mandatory minimum sentence under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 10A O.S. 2021, Section 2-5-204, as amended by Section 4, Chapter 375, O.S.L. 2022 (10A O.S. Supp. 2022, Section 2-5-204), is amended to read as follows:

Section 2-5-204. A. A child who is arrested for an offense pursuant to subsection A, B, C, D, or E of Section 2-5-205 of this title, may, depending on the child's age and alleged crime, be charged as a juvenile delinquent, youthful offender, or an adult. If charged as a juvenile delinquent, a petition shall be filed. If charged as a youthful offender or adult, an information shall be

1 filed. At any time after the child is charged as a youthful  
2 offender or adult, the district attorney may dismiss the information  
3 and file a juvenile delinquent petition.

4 B. If the child is not otherwise represented by counsel and  
5 either the child, his or her parent, guardian, or next friend  
6 requests an attorney prior to or during interrogation, or upon being  
7 charged by information, as provided in subsection A of this section,  
8 the court shall appoint an attorney, who shall not be a district  
9 attorney, for the child regardless of any attempted waiver by the  
10 parent, guardian, or next friend of the right to be represented by  
11 counsel. If the court appoints an attorney for a child for the  
12 interrogation or at the initial appearance, the court shall review  
13 the appointment at a subsequent hearing to determine if the child,  
14 parent, guardian, or next friend qualifies for a court-appointed  
15 attorney.

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

23 D. All youthful offender court records for a person who is  
24 certified to stand trial as an adult or youthful offender shall be

1 considered adult records and shall not be subject to the provisions  
2 of Chapter 6 of the Oklahoma Juvenile Code; provided, however, all  
3 reports, evaluations, motions, records, exhibits or documents  
4 regarding the educational history, mental health or medical  
5 treatment or condition of the person that are submitted to the court  
6 or admitted into evidence during the hearing on the motion for  
7 certification as a juvenile or a youthful offender or on the motion  
8 for imposition of an adult sentence shall be confidential and shall  
9 be filed or admitted under seal, except that such records shall be  
10 provided to the Office of Juvenile Affairs. Any testimony regarding  
11 the reports, evaluations, motions, records, exhibits or documents  
12 shall be given in camera and shall not be open to the general  
13 public; provided, all persons having a direct interest in the case  
14 as provided in paragraph 1 of subsection A of Section 2-2-402 of  
15 this title shall be allowed to be present during the testimony but  
16 shall be admonished not to discuss the testimony following the  
17 hearing. All reports, evaluations, motions, records, exhibits or  
18 documents shall be released from under seal by order of the court if  
19 the youthful offender is sentenced to the custody or supervision of  
20 the Department of Corrections by the court pursuant to ~~paragraph 1~~  
21 ~~of subsection B~~ A of Section ~~2-5-209~~ 2-5-208A or ~~subsection B of~~  
22 Section ~~2-5-210~~ 2-5-210A of this title or if the juvenile or  
23 youthful offender is later charged as an adult with a felony crime.  
24

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

3 F. Upon arrest and detention of a person subject to the  
4 provisions of the Youthful Offender Act, the person has the same  
5 right to be released on bail as would an adult in the same  
6 circumstances.

7 G. Upon a verdict of guilty or entry of a plea of guilty or  
8 nolo contendere by a youthful offender who has been certified for  
9 the imposition of an adult sentence as provided by Section ~~2-5-207~~  
10 2-5-207A of this title, the person may be detained in an adult jail,  
11 adult lockup, adult detention facility or other adult facility if  
12 that facility is licensed by the State Department of Health to  
13 detain children under eighteen (18) years of age while the person is  
14 awaiting housing by the Department of Corrections. In no event  
15 shall a person who was under eighteen years of age at the time the  
16 offense was committed be sentenced to life imprisonment without the  
17 possibility of parole or be given a mandatory minimum sentence that  
18 carries a term of imprisonment that exceeds twenty (20) years.

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

23 1. The child or youthful offender has been certified to stand  
24 trial as an adult pursuant to any certification procedure provided

1 by law and is subsequently convicted of the alleged offense or  
2 against whom the imposition of judgment and sentence has been  
3 deferred; or

4 2. The youthful offender has been certified for the imposition  
5 of an adult sentence as provided by Section ~~2-5-207~~ 2-5-207A of this  
6 title and is subsequently convicted of the alleged offense or  
7 against whom the imposition of judgment and sentencing has been  
8 deferred.

9 I. Except as otherwise provided in the Youthful Offender Act, a  
10 person who has been certified as a youthful offender shall be  
11 prosecuted as a youthful offender in all subsequent criminal  
12 proceedings until the youthful offender has attained eighteen (18)  
13 years of age.

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

17 SECTION 2. AMENDATORY 22 O.S. 2021, Section 985.1, is  
18 amended to read as follows:

19 Section 985.1. A. When sentencing a person convicted of a  
20 criminal offense for which there is a mandatory minimum sentence of  
21 imprisonment, the court may depart from the applicable sentence if  
22 the court finds substantial and compelling reasons on the record,  
23 after giving due regard to the nature of the crime, history, and  
24

1 character of the defendant and his or her chances of successful  
2 rehabilitation, that:

3 1. The mandatory minimum sentence of imprisonment is not  
4 necessary for the protection of the public; ~~or~~

5 2. Imposition of the mandatory minimum sentence of imprisonment  
6 would result in substantial injustice to the defendant; or

7 3. The mandatory minimum sentence of imprisonment is not  
8 necessary for the protection of the public and the defendant, based  
9 on a risk and needs assessment, is eligible for an alternative  
10 court, a diversion program or community sentencing, without regard  
11 to exclusions because of previous convictions, and has been accepted  
12 to the same, pending sentencing.

13 B. The Except as provided in subsection D of this section, the  
14 court shall not have the discretion to depart from the applicable  
15 mandatory minimum sentence of imprisonment on convictions for  
16 criminal offenses under the following circumstances:

17 1. The offense for which the defendant was convicted is among  
18 those crimes listed in Section 571 of Title 57 of the Oklahoma  
19 Statutes as excepted from the definition of "nonviolent offense";

20 2. The offense for which the defendant was convicted was a sex  
21 offense and will require the defendant to register as a sex offender  
22 pursuant to the provisions of the Sex Offenders Registration Act;

23 3. The offense for which the defendant was convicted involved  
24 the use of a firearm;

1 4. The offense for which the defendant was convicted is a crime  
2 listed in Section 13.1 of Title 21 of the Oklahoma Statutes  
3 requiring the defendant to serve not less than eighty-five percent  
4 (85%) of any sentence of imprisonment imposed by the judicial system  
5 prior to becoming eligible for consideration for parole;

6 5. The offense for which the defendant was convicted is a  
7 violation of the Trafficking in Illegal Drugs Act as provided in  
8 Sections 2-414 through 2-420 of Title 63 of the Oklahoma Statutes;

9 6. The defendant was the leader, manager or supervisor of  
10 others in a continuing criminal enterprise; or

11 7. The offense for which the defendant was convicted is a  
12 violation of the Oklahoma Antiterrorism Act as provided in Sections  
13 1268 through 1268.8 of Title 21 of the Oklahoma Statutes.

14 C. Any departure from the mandatory minimum sentence as  
15 authorized in this section shall not reduce the sentence to less  
16 than twenty-five percent (25%) of the mandatory term.

17 D. The court shall depart from the applicable mandatory minimum  
18 sentence as required pursuant to subsection G of Section 2-5-204 of  
19 Title 10A of the Oklahoma Statutes.

20 SECTION 3. This act shall become effective November 1, 2023.

21  
22 59-1-1009 TEK 1/4/2023 5:10:36 PM  
23  
24  
25