

# Lunch & Learn

## 2021 Legislative Update

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**OKLAHOMA**  
Juvenile Affairs

# Amendments to Delinquent and Youthful Offender Statutes

- [HB1799](#) - Expungements in Delinquent Cases, Amends [10A O.S. § 2-6-109](#), takes effect 11/1/21;
- [HB2311](#) - Housing Juveniles in Adult Jails, Amends [10A O.S. § 2-3-101](#), takes effect 11/1/21;
- [HB2312](#) - Juvenile Competency, Amends 10A O.S. §§ [2-2-401.1](#), [2-2-401.2](#), [2-2-401.3](#) and [2-2-401.7](#), takes effect 11/1/21;
- [HB2317](#) - Establishes a Grievance Process for Children Detained in Adult Jails, Creates [10A O.S. § 2-3-105](#), takes effect 11/1/21;
- [SB310](#) - Youthful Offender Statute, Amends 10A O.S. §§ [2-5-205](#) and [2-5-206](#), takes effect 11/1/21.

# HB1799/Amends 10A O.S. § 2-6-109 - Expungements

- The amendments contained in this bill significantly change expungements for delinquents. The bill allows the child, the child's parent, the child's legal guardian, or the child's attorney to ask the court to expunge the child's juvenile court records after the child has completed the requirements of their informal adjustment agreement, deferred adjudication, or a period of probation or custody.
- The request may be made either orally or in writing to expunge the records at the time the case is before the court for the final review or after the case has been closed or dismissed. If State does not object no hearing is necessary. **THE CHILD NO LONGER HAS TO WAIT UNTIL THEY TURN 21 YEARS OLD TO MAKE THIS REQUEST.**
- To grant the expungement, the court must find that **"THE HARM TO PRIVACY OF THE PERSON OR THE CHILD IN INTEREST OR DANGERS OF UNWARRANTED ADVERSE CONSEQUENCES OUTWEIGH THE PUBLIC INTEREST IN RETAINING THE RECORDS."**
- If granted the records are not destroyed, they are sealed, and law enforcement, the DA, the child, the child's defense counsel, the courts, DOC, juvenile bureaus, & OJA may still access to the records without a court order.
- If you get a request for assistance from the Court, the child, the parents/guardians, or the attorney OJA has drafted a Motion for Expungement and an Order for Expungement. Send an e-mail to: [ben.brown@oja.ok.gov](mailto:ben.brown@oja.ok.gov).
- Bill was authored by Representatives Miller, Cruz, Lawson, and Munson and Senator Rosino.

# HB2311/Amends 10A O.S. § 2-3-101 - Kids in Jails

- The amendments to this statute bring Oklahoma into compliance with the Juvenile Justice and Delinquency Prevention Act (JJDP).
- **JUVENILE DETENTION IS NOW THE INITIAL PLACEMENT** for all persons under the age of eighteen (18) placed into custody.
- The **ONLY EXCEPTION** is for a child, who is fifteen (15) to seventeen (17) years old and is charged with murder in the first degree. If the juvenile meets these two requirements, then:
  - ❖ The child charged with murder in the first degree must initially be placed in a juvenile detention facility;
  - ❖ The State must file a motion seeking the child's removal from detention to an adult jail;
  - ❖ The Court must hold a hearing, at which the child must be represented by counsel, and hear evidence regarding the guidelines specified in the statute;
  - ❖ After the hearing the Court may order the child's transfer to an adult jail only if it finds that "it is in the interest of justice that the child be placed in an adult jail, adult lockup, adult detention facility or other adult facility" additionally, the Court must then make written findings regarding its decision. See [10A O.S. § 2-3-101\(E\)\(1\)](#).

# HB2311/Amends 10A O.S. § 2-3-101 - Kids in Jails continued

- "In determining whether it is in the interest of justice that a child who is at least fifteen (15) years of age and who is charged with murder in the first degree be placed in an adult jail, adult lockup, adult detention facility or other adult facility, **the court shall consider:**
- a. the **age** of the child,
  - b. the physical and **mental maturity** of the child,
  - c. the **present mental state** of the child, including whether the child presents an imminent risk of harm to the child,
  - d. the **nature and circumstances** of the alleged offense,
  - e. the **child's history** of prior delinquent acts,
  - f. the **relative ability** of the available adult and juvenile detention facilities to not only meet the specific needs of the child but also to protect the **safety** of the public as well as other detained youth, and
  - g. any **other relevant factors**." See [10A § 2-3-101\(E\)\(2\)](#).

# HB2311/Amends 10A O.S. § 2-3-101 - Kids in Jails continued

- If a court determines that a child should be placed in a adult jail the Court shall:
  - a. review the placement every **thirty (30) days (metro areas)/forty-five (45) days (rural areas)** and
  - b. the **child may not be held in an adult jail for more than one hundred eighty (180) days**, unless the court, in writing, determines there is good cause for an extension, or the child expressly waives this limitation. See [10A O.S. § 2-3-101\(E\)\(3\)](#).
  
- If a child is placed in an adult jail they shall have the following rights & protections to address their health & safety:
  1. The **child's most current mental health/suicide screening** (approved by OJA) shall be provided to the jail, when the child is transferred from detention to the jail, and
  
  2. The jail shall process requests for visits and allow approved visitors **CONTACT VISITS** with the child within five (5) business days of the request. See [10A O.S. § 2-3-101\(F\)\(1-2\)](#).

# HB2311/Amends 10A O.S. § 2-3-101 - Kids in Jails continued

- Historically, sixteen (16) county jails were certified by the Oklahoma Dept. of Health to house children. Currently there are fifteen (15) county jails approved to house children:

Caddo	<del>Oklahoma</del> (decertified 7/13/21)
Cleveland	Pontotoc
Comanche	Rogers
Custer	Stephens
Grady	Tulsa
Jackson	Wagoner
Kay	Washington
Muscogee	Washita

- Because of the amendments to [10A O.S. § 2-3-101](#), the current certifications of all jails to hold children will expire at midnight of October 31, 2021. Any adult jail in Oklahoma which wishes to house children age fifteen (15) to seventeen (17) charged with murder in the first degree after November 1, 2021, must apply for and be certified/recertified by the Department of Health. Any jail which is not certified, or recertified prior to or after November 1, 2021, will not be able to legally house children in the jail.
- Bill was authored by Representatives Lawson, Munson, Brewer, Virgin, and Pittman and Senator Haste.

# HB2312/Amends 10A O.S. §§ 2-2-401.1, 2-2-401.2, 2-2-401.3, & 2-2-401.7 - Juvenile Competency

- The amendments to these statutes brings **YOUTHFUL OFFENDERS** under the provisions of the Juvenile Competency Statutes.
- Previously the determinization of the competency of a youthful offender was made using the adult competency statutes and the evaluations were performed by either contract psychologist with the Department of Mental Health or at the Oklahoma Forensic Center (OFC).
- The amendments to the statutes also gives the Office of Juvenile Affairs standing to file a "**MOTION TO INTERVENE**" in a delinquent or youthful offender case to raise the issue of the child's competency if the child is in OJA's custody. See [10A O.S. § 2-2-401.2](#).
- **OJA DOES NOT** anticipate on regularly filing motions to intervene in delinquent/youthful offender cases and will do so only in rare instances. The issue of a child's competency should usually be raised by the child's attorney.
- Bill was authored by Representatives Lawson, Munson, and Virgin and Senator Haste.

# HB2317/Creates 10A O.S. § 2-3-105 - Grievance Process for Children Detained in Adult Jails

- This bill authorizes the Oklahoma Commission on Children and Youth (OCCY) to create and administer a grievance reporting system for children who are detained in an adult jails.
- The grievance process is available to any child housed in an adult jail both prior to or after their adjudication or conviction.
- **A grievance may be filed by the child, or on their behalf by their parent, legal guardian, custodian, foster parent, or other person responsible for their health or welfare.** See [10A O.S. § 2-1-103\(25\)](#).
- Grievances sent to OCCY will be assigned to their Juvenile System Oversight Division for investigation. Notice of grievances will be sent to OJA and/or DHS if the child is in their custody.
- OCCY shall send the results of its investigation, if necessary, to: OJA, DHS, law enforcement, or any other appropriate agency.
- The bill was authored by Representatives Lawson, Munson, and Dills and Senators Haste and Floyd.

# HB2317/Creates 10A O.S. § 2-3-105 - Grievance Process for Children Detained in Adult Jails continued

- OCCY's Office of Juvenile System Oversight shall have the authority to investigate complaints, including, but not limited to, the following:
  - a. placement,
  - b. treatment,
  - c. psychological services,
  - d. social services,
  - e. educational services,
  - f. recreation,
  - g. abuse, neglect or misconduct,
  - h. cleanliness and hygiene, and
  - i. routine problems with employees, contractors or other incarcerated persons within the facility. See [10A O.S. § 2-3-105\(B\)\(1\)](#).
  
- The child, their parent/guardian/custodian/foster parent, or other person responsible for their health or welfare may file a grievance with OCCY by:
  - ❖ Filling out an OCCY grievance form and delivering it to the jail;
  - ❖ Calling the OCCY hotline at (405) 606-4936 and reporting the grievance; or
  - ❖ E-mailing the grievance to OCCY at: [Youth.jails@occy.ok.gov](mailto:Youth.jails@occy.ok.gov).

# SB310/Amends 10A O.S. §§ 2-5-205 & 2-5-206 - YO Act

- This bill amended two sections of the Youthful Offender Act.
- [10A O.S. § 2-5-205](#) (Murder One Statute)
  - ❖ Adds Rape/Attempted Rape in the First Degree to Murder in the First Degree as a crime where a child who is age fifteen (15), sixteen (16) or seventeen (17) shall be held accountable as an adult and shall not be eligible for certification as a youthful offender or as a juvenile delinquent. See [10A O.S. § 2-5-205\(B\)](#).
  - ❖ Adds victim impact statement(s) to guideline # 2 ("2. Whether the offense was against persons, and, if personal injury resulted, the degree of personal injury, **and the statements of the victim or victims;**") of the guidelines the court must consider in ruling on the motion for certification as a youthful offender or juvenile delinquent. See [10A O.S. § 2-5-205\(E\)\(2\)](#).
  - ❖ If a Youthful Offender Certification Study is ordered based on [10A O.S. § 2-5-205](#) be sure to request, in writing, that the DA's office obtain and provide to OJA any victim impact statement(s) that the victim(s) wish the court to consider. The statement(s) should be obtained by the ADA or the Victim/Witness Coordinator. **DO NOT** contact the victim(s) directly to request the victim impact statement(s).

# SB310/Amends 10A O.S. §§ 2-5-205 & 2-5-206 - YO Act continued

## ➤ [10A O.S. § 2-5-206](#) (Other YO Crimes Statute)

- ❖ Removes Rape/Attempted Rape in the First Degree from the list of charges that a child who is age fifteen (15), sixteen (16) or seventeen (17) can be charged with as a youthful offender. [10A O.S. § 2-5-206\(A\)\(1\)](#).
- ❖ New section: [10A O.S. § 2-5-206\(A\)\(2\)](#).
  - ❖ "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 such acts as a youthful offender pursuant to this section or as an adult pursuant to paragraph 2 of subsection B of [Section 2-5-205](#) of this title."
  - ❖ This section adds back Rape/Attempted Rape in the First Degree as a crime that a child who is age fifteen (15), sixteen (16) or seventeen (17) can be charged with as a youthful offender.
- ❖ 10A O.S. §§ [2-5-205\(B\)](#) and [2-5-206\(A\)\(1 & 2\)](#) seem to conflict with one another. If and/or when a child is charged with rape/attempted rape in the first degree as an adult rather than a youthful offender there will likely be a constitutional challenge to this statute.

# SB310/Amends 10A O.S. §§ 2-5-205 & 2-5-206 - YO Act continued

- ❖ Adds victim impact statement(s) to guideline b (b. Whether the offense was against persons, and, if personal injury resulted, the degree of personal injury, **and the statements of the victim or victims**) of the guidelines the court must consider in ruling on the motion for certification as a juvenile delinquent. See [10A O.S. § 2-5-206\(F\)\(4\)\(b\)](#).
  - ❖ If a Youthful Offender Certification Study is ordered based on [10A O.S. § 2-5-206](#) be sure to request, in writing, that the DA's office obtain and provide to OJA any victim impact statement(s) that the victim(s) wish the court to consider. The statement(s) should be obtained by the ADA or the Victim/Witness Coordinator. **DO NOT** contact the victim(s) directly to request the victim impact statement(s).
  - ❖ Note: The victim impact statement language from sections 205 and 206 was not added to guideline b in the statute that controls the motion for imposition of an adult sentence, see [10A O.S. § 2-5-208\(C\)\(2\)\(b\)](#), or the statute which allows the court to order a presentence investigation (PSI). See [10A O.S. § 2-5-209\(A\)\(2\)\(b\)](#).
- This Bill was authored by Senators Murdock, Montgomery, and Bergstrom and Representatives West (Josh) and Dobrinski.

# Amendments to Other Statutes Which Affect OJA

- [HB1992](#) - Report on the Possible Repurposing of Southwest Oklahoma Juvenile Center (SWOJC), Amends [10A O.S. § 2-7-620](#), takes effect 07/1/21;
- [HB2352](#) - Tribes and Child Welfare cases, Amends [10 O.S. § 40.7](#), took effect 4/23/21;
- [SB987](#) - Transportation of a child in OJA custody as part of a child abuse investigation, [10A O.S. § 1-2-105](#), takes effect 11/1/21.

# HB1992/Amends 10A O.S. § 2-7-620 - SWOJC

- This was a continuation of the repurpose report OJA prepared in 2018 and required by pursuant to [HB2837](#) (2017).
- The amendments to the statute required that by October 1, 2021, OJA was to provide a report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives on the feasibility of entering into a contract for or operating group homes at the Southwest Oklahoma Juvenile Center (SWOJC) campus in Manitou, Oklahoma.
- The report was delivered to all of the necessary persons/offices on September 30, 2021, and it explored the option of repurposing of SOJC into group homes run by a contractor or by OJA.
- Bill was authored by Representatives Caldwell (Terry) and Talley and Senator Kidd.

# HB2352/Amends 10 O.S. § 40.7 - Tribes and Child Welfare Cases

- The Director of the Department of Human Services and the **Executive Director of the Office of Juvenile Affairs** are authorized to **enter into agreements on behalf of the state with Indian tribes in Oklahoma regarding care and custody of Indian children and jurisdiction over child custody proceedings** including agreements which provide for orderly transfer of jurisdiction on a case by case basis and agreements which provide for concurrent jurisdiction between the state and the Indian tribe, as authorized by the Federal Indian Child Welfare Act, [25 U.S.C. § 1919](#).
- **The State of Oklahoma hereby ratifies all agreements in conformity with the Federal Indian Child Welfare Act executed prior to the enactment of this act**, and any such agreement shall be enforceable in any case filed or pending at the time that an agreement vesting concurrent jurisdiction is entered into between the state and an Indian tribe.
- Bill was authored by Representatives Miller, Cruz, Lawson, and Munson and Senator Rosino.

# SB987/Amends 10A § 1-2-105 - Transportation of a child in OJA custody as part of a child abuse investigation

- In a child abuse investigation or assessment the court may order:
  - ❖ "The investigation or assessment may include a medical, psychological, or psychiatric examination of any child in the home, and may include an interview conducted by appropriate personnel using the protocols and procedures specified in [Section 1-9-102](#) of this title." [See 10A O.S. § 1-2-105\(B\)\(2\)](#).
  - ❖ **"The court may order that the child be transported to a location approved by the court for the interview or examination and designate an appropriate person or persons to transport the child.** Such persons may include but are not limited to: a relative of the child; a person responsible for the child's health, safety, or welfare; law enforcement personnel; employees of the Department of Human Services; **or employees of the Office of Juvenile Affairs if the child is in the custody of the Office of Juvenile Affairs.** When making this determination, the court shall consider safety protocols based on the gender of the child." See [10A O.S. § 1-2-105\(B\)\(2\)](#).
- Bill was authored by Senator Weaver and Representative Bush.



# Questions?

# THANK YOU

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