ENGROSSED HOUSE
BILL NO. 2364 BY: STEIDLEY

( COURTS - POWERS OF THE COURT TO PROVIDE FOR CERTAIN MINIMUM FINES - AMENDING SECTIONS IN TITLES 21, 22, 3 AND 47 - EFFECTIVE DATE - EMERGENCY )

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 9, is amended to read as follows:

Section 9. Except in cases where a different punishment is prescribed by this chapter, or by some existing provision of law, every offense declared to be felony is punishable by a fine of not less than _____ Dollars ($_____.00) and not exceeding One Thousand Dollars ($1,000.00), or by imprisonment in the State Penitentiary not exceeding two (2) years, or by both such fine and imprisonment.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 10, is amended to read as follows:

Section 10. Except in cases where a different punishment is prescribed by this chapter or by some existing provisions of law, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding one (1) year or by a fine of not less than _____ Dollars ($_____.00) and not exceeding Five Hundred Dollars ($500.00), or both such fine and imprisonment.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 64, is amended to read as follows:

Section 64. A. Upon a conviction for any misdemeanor punishable by imprisonment in any jail, in relation to which no fine is herein prescribed, the court may impose a fine on the offender of not less than _____ Dollars ($_____.00) and not exceeding One Thousand Dollars ($1,000.00) in addition to the imprisonment prescribed.

B. Upon a conviction for any felony punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender of not less than _____ Dollars ($_____.00) and not exceeding Ten Thousand Dollars ($10,000.00) in addition to the imprisonment prescribed.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 991a, is amended to read as follows:

Section 991a. A. Except as otherwise provided in the Elderly and Incapacitated Victims Protection Program, when a defendant is convicted of a crime and no death sentence is imposed, the court shall either:

1. Suspend the execution of sentence in whole or in part, with or without probation. The court, in addition, may order the convicted defendant at the time of sentencing or at any time during the suspended sentence to do one or more of the following:

a. To provide restitution to the victim according to a schedule of payments established by the sentencing court, together with interest upon any pecuniary sum at the rate of twelve percent (12%) per annum, if the defendant agrees to pay such restitution or, in the opinion of the court, if he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family and if the extent of the damage to the victim is determinable with reasonable certainty, or

b. To reimburse any state agency for amounts paid by the state agency for hospital and medical expenses incurred by the victim or victims, as a result of the criminal act for which such person was convicted, which reimbursement shall be made directly to the state agency, with interest accruing thereon at the rate of twelve percent (12%) per annum, or

c. To engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the person convicted, or

d. To pay a reasonable sum into any trust fund, established pursuant to the provisions of Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes, and which provides restitution payments by convicted defendants to victims of crimes committed within the State of Oklahoma wherein such victim has incurred a financial loss, or

e. To confinement in the county jail for a period not to exceed six (6) months, or

f. To reimburse the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which he is being sentenced, or

g. To repay the reward or part of the reward paid by a certified local crimestoppers program and the Oklahoma Reward System. In determining whether the defendant shall repay the reward or part of the reward, the court shall consider the ability of the defendant to make the payment, the financial hardship on the defendant to make the required payment, and the importance of the information to the prosecution of

the defendant as provided by the arresting officer or the district attorney with due regard for the confidentiality of the records of the certified local crimestoppers program and the Oklahoma Reward System. The court shall assess this repayment against the defendant as a cost of prosecution. "Certified local crimestoppers program" means a crimestoppers program certified by the Office of the Attorney General pursuant to Section 991g of this title. The "Oklahoma General Reward System" means the reward program established by Section 150.18 of Title 74 of the Oklahoma Statutes.

However, any such order for restitution, community service, payment to a certified local crimestoppers program, payment to the Oklahoma Reward System, or confinement in the county jail, or a combination thereof, shall be made in conjunction with probation and shall be made a condition of the suspended sentence; or

2. Impose a fine prescribed by law for the offense, with or without probation or commitment and with or without restitution or service as provided for in this section; or

3. Commit such person for confinement provided for by law with or without restitution as provided for in this section; or

4. In the case of nonviolent felony offenses, sentence such person to the Community Service Sentencing Program created pursuant to Section 991a-4 of this title; or

5. In addition to the other sentencing powers of the court, in the case of a person convicted of operating or being in control of a motor vehicle or aircraft while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol or another intoxicating substance, or convicted of operating a motor vehicle or aircraft while the ability of the person to

operate such vehicle was impaired due to the consumption of alcohol, require such person:

a. To participate in an alcohol and drug substance abuse course, pursuant to Sections ~~11-902.2~~ 3-452 and ~~11-902.3~~ 3-453 of Title ~~47~~ 43A of the Oklahoma Statutes,

b. To attend a victims impact panel program sponsored by the Highway Safety Division of the Oklahoma Department of Transportation, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not to exceed Five Dollars ($5.00), to the program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee,

c. To both participate in the alcohol and drug substance abuse course, pursuant to subparagraph a of this paragraph and attend a victims impact panel program, pursuant to subparagraph b of this paragraph; or

6. In addition to the other sentencing powers of the court, in the case of a person convicted of prostitution pursuant to Section 1029 of Title 21 of the Oklahoma Statutes, require such person to receive counseling for the behavior which may have caused such person to engage in prostitution activities. Such person may be required to receive counseling in areas including but not limited to alcohol and substance abuse, sexual behavior problems, or domestic abuse or child abuse problems.

B. When sentencing a person convicted of a crime, the court shall first consider a program of restitution for the victim, as well as imposition of a fine or incarceration of the offender. The provisions of paragraph 1 of subsection A of this section shall not apply to defendants being sentenced upon their third or subsequent to their third conviction of a felony.

C. Probation, for purposes of subsection A of this section, is a procedure by which a defendant found guilty of a crime is released by the court subject to conditions imposed by the court and subject to the supervision of the Department of Corrections. Such supervision shall be initiated upon an order of probation from the court, and shall not exceed two (2) years. However, such supervision may be extended for a period not to exceed the expiration of the maximum term or terms of the sentence upon a determination by the Division of Probation and Parole of the Department of Corrections that the best interests of the public and the releasee will be served by an extended period of supervision.

D. The Department of Corrections, or such other agency as the court may designate, shall be responsible for the monitoring and administration of the restitution and service programs provided for by subparagraphs a, c, and d of paragraph 1 of subsection A of this section, and shall ensure that restitution payments are forwarded to the victim and that service assignments are properly performed.

E. 1. The Division of Probation and Parole of the Department of Corrections is hereby authorized, subject to funds available through appropriation by the Legislature, to contract with counties for the administration of county Community Service Sentencing Programs.

2. Any offender eligible to participate in the Program pursuant to this act shall be eligible to participate in a county Program; provided, participation in county-funded Programs shall not be limited to offenders who would otherwise be sentenced to confinement with the Department of Corrections.

3. The Division shall establish criteria and specifications for contracts with counties for such Programs. A county may apply to the Division for a contract for a county-funded Program for a specific period of time. The Department shall be responsible for ensuring that any contracting county complies in full with

specifications and requirements of the contract. The contract shall set appropriate compensation to the county for services to the Division.

4. The Division is hereby authorized to provide technical assistance to any county in establishing a Program, regardless of whether the county enters into a contract pursuant to this subsection. Technical assistance shall include appropriate staffing, development of community resources, sponsorship, supervision and any other requirements set forth in this act.

5. The Department shall annually make a report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House on the number of such Programs, the number of participating offenders, the success rates of each Program according to criteria established by the Department and the costs of each Program.

SECTION 5. AMENDATORY 3 O.S. 1991, Section 301, is amended to read as follows:

Section 301. A. It is unlawful and punishable as provided in subsection D of this section for any person to operate an aircraft within this state who:

1. Has a blood or breath alcohol concentration, as defined in Section ~~5~~ 305 of this ~~act~~ title, of four-hundredths (0.04) or more within two (2) hours after the arrest of such person; or

2. Is under the influence of any intoxicant.

B. The fact that any person charged with a violation of this section is or has been lawfully entitled to use an intoxicant shall not constitute a defense against any charge of violating this section.

C. As used in Sections ~~1~~ 301 through ~~8~~ 308 of this ~~act~~ title:

1. "Intoxicant" means:

a. any beverage containing alcohol,

b. any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes,

c. any substance which is capable of being ingested, inhaled, injected or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions of the human body, and

d. any combination of alcohol, controlled dangerous substances, and substances capable of being ingested, inhaled, injected or absorbed into the human body and capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions of the human body; and

2. "Operate" means manipulating any of the levers, the starting mechanism, the brakes or other mechanism or device of an aircraft, setting in motion any aircraft, or piloting any aircraft.

D. Every person who is convicted of a violation of the provisions of this section shall be deemed guilty of a misdemeanor for the first offense and shall be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year, and a fine of not more than One Thousand Dollars ($1,000.00). Any person who within ten (10) years after a previous conviction of a violation of this section is convicted of a second or subsequent offense pursuant to the provisions of this section or has a prior conviction within ten (10) years prior to the conviction pursuant to the provisions of this section, in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection A of this section shall be deemed guilty of a felony and shall be sentenced to the custody of the Department of Corrections for not less than one (1) year and not to exceed five (5) years, and a fine of not less than _____ Dollars ($_____.00)

and not more than Two Thousand Five Hundred Dollars ($2,500.00). When a sentence of incarceration is imposed, the person shall be processed through the Lexington Assessment and Reception Center. If the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk, the person shall be assigned to the Department of Mental Health and Substance Abuse Services for substance abuse treatment. The inmate shall be required to reimburse the Department of Mental Health and Substance Abuse Services for all or part of the actual cost incurred for treatment of the inmate while the inmate was assigned to the Department of Mental Health and Substance Abuse Services, if at the time the sentence of incarceration was imposed, the court determined that the convicted person has the ability to pay for all or part of the cost of treatment. The court shall determine the amount of reimbursement the convicted person shall pay. While assigned to such a Department of Mental Health and Substance Abuse Services treatment program the inmate shall comply with the rules and regulations as agreed upon by the Department of Mental Health and Substance Abuse Services and the Department of Corrections. Any infraction of said rules may result in the inmate's reassignment to a correctional facility of the Department of Corrections. Upon successful completion of the treatment program the person shall be properly reassigned by the Department of Corrections for the completion of the sentence imposed by the court. Prior to discharge from the treatment facility, the treatment facility shall forward to the Department of Corrections a report and discharge summary including arrangements and recommendations for further disposition and follow-up treatment. If the person is evaluated not to be receptive to treatment or is evaluated to be a security risk, the inmate shall be assigned to a state correctional facility according to normal Department of Corrections classification procedures. In the event a felony conviction does not result in a sentence of

incarceration as provided for in this subsection, the person shall be required to serve not less than ten (10) days of community service, or to undergo inpatient rehabilitation or treatment in a public or private facility with at least minimum security for a period of not less than forty-eight (48) consecutive hours, notwithstanding the provisions of Sections 991a, 991a-2 and 996.3 of Title 22 of the Oklahoma Statutes.

E. Any person who is found guilty of a violation of the provisions of this section may be referred, prior to sentencing, to an alcoholism evaluation facility designated by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the facility for the evaluation in an amount not to exceed Seventy-five Dollars ($75.00). The facility shall, within seventy-two (72) hours, submit a written report to the court for the purpose of assisting the court in its final sentencing determination.

SECTION 6. AMENDATORY 47 O.S. 1991, Section 11-902, is amended to read as follows:

Section 11-902. A. It is unlawful and punishable as provided in subsection C of this section for any person to drive, operate, or be in actual physical control of a motor vehicle within this state who:

1. Has a blood or breath alcohol concentration, as defined in Section 756 of this title, of ten-hundredths (0.10) or more at the time of a test of such person's blood or breath administered within two (2) hours after the arrest of such person;

2. Is under the influence of alcohol;

3. Is under the influence of any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle; or

4. Is under the combined influence of alcohol and any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle.

B. The fact that any person charged with a violation of this section is or has been lawfully entitled to use alcohol or a controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this section.

As used in this title, the term "other intoxicating substance" shall mean any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes, and any other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions.

C. Every person who is convicted of a violation of the provisions of this section shall be deemed guilty of a misdemeanor for the first offense and shall be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year, and a fine of not more than One Thousand Dollars ($1,000.00). Any person who within ten (10) years after a previous conviction of a violation of this section is convicted of a second or subsequent offense pursuant to the provisions of this section or has a prior conviction after October 31, 1984, and within ten (10) years prior to the conviction pursuant to the provisions of this section, in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection A of this section shall be deemed guilty of a felony and shall be sentenced to the custody of the Department of Corrections for not less than one (1) year and not to exceed five (5) years, and a fine of not less than _____ Dollars ($_____.00) and not more than Two

Thousand Five Hundred Dollars ($2,500.00). When a sentence of incarceration is imposed, the person shall be processed through the Lexington Assessment and Reception Center. If the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk, the person shall be assigned to the Department of Mental Health and Substance Abuse Services for substance abuse treatment. The inmate shall be required to reimburse the Department of Mental Health and Substance Abuse Services for all or part of the actual cost incurred for treatment of the inmate while the inmate was assigned to the Department of Mental Health and Substance Abuse Services, if at the time the sentence of incarceration was imposed, the court determined that the convicted person has the ability to pay for all or part of the cost of treatment. The court shall determine the amount of reimbursement the convicted person shall pay. While assigned to such a Department of Mental Health and Substance Abuse Services treatment program the inmate shall comply with the rules and regulations as agreed upon by the Department of Mental Health and Substance Abuse Services and the Department of Corrections. Any infraction of said rules may result in the inmate's reassignment to a correctional facility of the Department of Corrections. Upon successful completion of the treatment program the person shall be properly reassigned by the Department of Corrections for the completion of the sentence imposed by the court. Prior to discharge from the treatment facility, the treatment facility shall forward to the Department of Corrections a report and discharge summary including arrangements and recommendations for further disposition and follow-up treatment. If the person is evaluated not to be receptive to treatment or is evaluated to be a security risk, the inmate shall be assigned to a state correctional facility according to normal Department of Corrections classification procedures. In the event a felony conviction does not result in a sentence of

incarceration as provided for in this subsection, the person shall be required to serve not less than ten (10) days of community service, or to undergo in-patient rehabilitation or treatment in a public or private facility with at least minimum security for a period of not less than forty-eight (48) consecutive hours, notwithstanding the provisions of Sections 991a, 991a-2 and 996.3 of Title 22 of the Oklahoma Statutes.

D. The Department of Mental Health and Substance Abuse Services and the Department of Corrections may certify to the Department of Public Safety that a person has successfully completed a treatment program provided for in subsection C of this section and is successfully complying with any follow-up treatment required by the Department of Corrections. In such case, the person shall be given credit therefor as fulfillment of all provisions of Section ~~11-902.3 of this title~~ 3-453 of Title 43A of the Oklahoma Statutes and shall be permitted to apply for reinstatement of any suspension, revocation, cancellation or denial order withdrawing his privilege to drive. The Department of Public Safety is hereby authorized to reinstate any suspended or revoked license when the applicant meets the statutory requirements which affect his existing driving privilege.

E. Any person who is found guilty of a violation of the provisions of this section may be referred, prior to sentencing, to an alcoholism evaluation facility designated by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the facility for the evaluation in an amount not to exceed Seventy-five Dollars ($75.00). The facility shall, within seventy-two (72) hours, submit a written report to the court for the purpose of assisting the court in its final sentencing determination.

SECTION 7. AMENDATORY 47 O.S. 1991, Section 17-101, is amended to read as follows:

Section 17-101. (a) It is a misdemeanor for any person to violate any of the provisions of this title unless such violation is by this title or other law of this state declared to be a felony.

(b) 1. Every person convicted of a misdemeanor for a violation of any of the provisions of Sections 10-101 through 14-121 or Sections 16-101 through 16-114 of this title for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not less than Ten Dollars ($10.00) nor more than One Hundred Dollars ($100.00) or by imprisonment for not more than ten (10) days; for a second such conviction within one (1) year ~~thereafter~~ of the first conviction such person shall be punished by a fine of not less than ~~Twenty Dollars ($20.00)~~ _____ Dollars ($_____.00) nor more than Two Hundred Dollars ($200.00) or by imprisonment for not more than twenty (20) days or by both such fine and imprisonment; upon a third or subsequent conviction within one (1) year after the first conviction such person shall be punished by a fine ~~or~~ of not less than _____ Dollars ($____.00) and not more than Five Hundred Dollars ($500.00) or by imprisonment for not more than six (6) months or by both such fine and imprisonment.

2. Any person violating the provisions of Sections 10-101 through 14-121 or Sections 16-101 through 16-114 of this title, where a jail sentence is not mandatory may, in the discretion of the district attorney wherein the offense occurred, be permitted to enter a plea of guilty by written statement by the person charged to be presented to the court wherein the case is filed. A remittance covering the fine and costs may be considered and received with the same force and effect as a written plea of guilty.

(c) Unless another penalty is in this title or by the laws of this state provided, every person convicted of a misdemeanor for the violation of any other provision of this title shall be punished by

a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

(d) Provided, however, notwithstanding any provision of law to the contrary, any offense, including traffic offenses, in violation of any of the provisions of this title which is not otherwise punishable by a term of imprisonment or confinement shall be punishable by a term of imprisonment not to exceed one day in the discretion of the court, in addition to any fine prescribed by law.

SECTION 8. AMENDATORY 47 O.S. 1991, Section 17-102, is amended to read as follows:

Section 17-102. Any person who is convicted of a violation of any of the provisions of ~~this act herein~~ the Uniform Vehicle Code or by the laws of this state declared to constitute a felony shall be punished by imprisonment for not less than one (1) year nor more than five (5) years, or by a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

SECTION 9. This act shall become effective July 1, 1992.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 9th day of March, 1992.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1992.

President of the Senate