

ENROLLED HOUSE
BILL NO. 1017

BY: APPLE of the HOUSE

and

LAWLER of the SENATE

AN ACT RELATING TO CRIMINAL PROCEDURE; AMENDING 22 O.S. 1981, SECTION 991a, AS LAST AMENDED BY SECTION 1, CHAPTER 152, O.S.L. 1990 (22 O.S. SUPP. 1990, SECTION 991a), WHICH RELATES TO SENTENCING POWERS OF THE COURT; MODIFYING SUCH POWERS TO INCLUDE REPAYMENT OF REWARDS TO CERTIFIED LOCAL CRIMESTOPPERS PROGRAMS AND THE OKLAHOMA REWARD SYSTEM; SPECIFYING SUCH REPAYMENT AS COST OF PROSECUTION; DEFINING TERM; REQUIRING THE OFFICE OF THE ATTORNEY GENERAL TO PROVIDE FOR CERTIFICATION OF LOCAL CRIMESTOPPERS PROGRAMS FOR PURPOSES OF REPAYMENT OF REWARDS; SPECIFYING CONSIDERATIONS FOR SUCH CERTIFICATION; REQUIRING CERTAIN ANNUAL AUDITS; AUTHORIZING CERTIFICATION OF PROGRAMS ON INITIATIVE OF THE OFFICE OF THE ATTORNEY GENERAL; AUTHORIZING MAINTENANCE OF LISTS RELATED TO SUCH PROGRAMS; SPECIFYING USE AND PURPOSE OF REPAYMENT MONIES; AMENDING 74 O.S. 1981, SECTION 18b, AS LAST AMENDED BY SECTION 1, CHAPTER 39, O.S.L. 1987 (74 O.S. SUPP. 1990, SECTION 18b), WHICH RELATES TO DUTIES OF THE ATTORNEY GENERAL; ADDING DUTY RELATED TO CERTIFICATION OF LOCAL CRIMESTOPPERS PROGRAMS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 22 O.S. 1981, Section 991a, as last amended by Section 1, Chapter 152, O.S.L. 1990 (22 O.S. Supp. 1990, 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 2 of this act. The "Oklahoma 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;

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

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 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 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 and 11-902.3 of Title 47 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.

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 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 991g of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The Office of the Attorney General, at the request of the court, shall determine whether a local crimestoppers program is qualified to receive repayments of rewards pursuant to Section 1 of this act. The Office of the Attorney General shall approve the local crimestoppers program to receive those repayments if, considering the organization, continuity, leadership, community support, audit pursuant to subsection B of this section and general conduct of the program, the Office of the Attorney General determines that the repayments will be spent to further the crime prevention purposes of the program.

B. Prior to certification by the Office of the Attorney General for a local crimestoppers program to receive repayments pursuant to Section 1 of this act, each program is subject to an audit by an independent accounting firm which must be submitted to the Office of the Attorney General for review. In order to maintain certification, the program shall be so audited each year and the audit submitted prior to July 1 of each year.

C. The Office of the Attorney General may certify a local crimestoppers program for purposes of Section 1 of this act even if a judge has not requested a determination for that program and may maintain a current list of approved local crimestoppers programs.

D. A local crimestoppers program certified by the Office of the Attorney General to receive repayments pursuant to Section 1 of this act shall use that money for the sole purpose of rewards to persons who report information on criminal activity only if that information leads to a defendant being indicted for or charged by information with a felony offense.

SECTION 3. AMENDATORY 74 O.S. 1981, Section 18b, as last amended by Section 1, Chapter 39, O.S.L. 1987 (74 O.S. Supp. 1990, Section 18b), is amended to read as follows:

Section 18b. The duties of the Attorney General as the chief law officer of the state shall be:

(a) To appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in the Supreme Court and Court of Criminal Appeals in which the state is interested as a party.

(b) To appear for the state and prosecute and defend all actions and proceedings in any of the federal courts in which the state is interested as a party.

(c) To appear at the request of the Governor, the Legislature, or either branch thereof, and prosecute and defend in any court or before any commission, board or officers any cause or proceeding, civil or criminal, in which the state may be a party or interested; and when so appearing in any such cause or proceeding, he may, if he

deems it advisable and to the best interest of the state, take and assume control of the prosecution or defense of the state's interest therein.

(d) To consult with and advise district attorneys, when requested by them, in all matters pertaining to the duties of their offices, when said district attorneys shall furnish the Attorney General with a written opinion supported by citation of authorities upon the matter submitted.

(e) To give his opinion in writing upon all questions of law submitted to him by the Legislature or either branch thereof, or by any state officer, board, commission or department, provided, that the Attorney General shall not furnish opinions to any but district attorneys, the Legislature or either branch thereof, or any other state official, board, commission or department, and to them only upon matters in which they are officially interested.

(f) At the request of the Governor, State Auditor and Inspector, State Treasurer, or either branch of the Legislature, to prosecute any official bond or any contract in which the state is interested, upon a breach thereof, and to prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with either of their Departments.

(g) Whenever requested by any state officer, board or commission, to prepare proper drafts for contracts, forms and other writing which may be wanted for the use of the state.

(h) To prepare drafts of bills and resolutions for individual members of the Legislature upon their written request stating the gist of the bill or resolution desired.

(i) To enforce the proper application of monies appropriated by the Legislature and to prosecute breaches of trust in the administration of such funds.

(j) To institute actions to recover state monies illegally expended, to recover state property and to prevent the illegal use of any state property, upon the request of the Governor or the Legislature.

(k) To pay into the State Treasury, immediately upon its receipt, all monies received by him belonging to the state.

(l) To keep and file copies of all opinions, contracts, forms and letters of the office, and to keep an index of all opinions, contracts and forms according to subject and section of the law construed or applied.

(m) To keep a register or docket of all actions, demands and investigations prosecuted, defended or conducted by him in behalf of the state. Said register or docket shall give the style of the case or investigation, where pending, court number, office number, the gist of the matter, result and the names of the assistants who handled the matter.

(n) To keep a complete office file of all cases and investigations handled by him on behalf of the state.

(o) To report to the Legislature or either branch thereof whenever requested upon any business relating to the duties of his office.

(p) To institute civil actions against members of any state board or commission for failure of such members to perform their duties as prescribed by the statutes and the Constitution and to prosecute members of any state board or commission for violation of the criminal laws of this state where such violations have occurred in connection with the performance of such members' official duties.

(q) To respond to any request for an opinion of his office, submitted by a member of the Legislature, regardless of subject

matter, by written opinion determinative of the law regarding such subject matter.

(r) To convene multicounty grand juries in such manner and for such purposes as provided by law; provided, such grand juries are composed of citizens from each of the counties on a pro rata basis by county.

(s) To investigate any report by the State Auditor and Inspector filed with him pursuant to Section 223 of this title and prosecute all actions, civil or criminal, relating to such reports or any irregularities or derelictions in the management of public funds or property which are violations of the laws of this state.

(t) To represent and protect the collective interests of all utility consumers of this state in rate-related proceedings before the Corporation Commission or in any other state or federal judicial or administrative proceeding.

(u) To represent and protect the collective interests of insurance consumers of this state in rate-related proceedings before the Insurance Property and Casualty Rate Board or in any other state or federal judicial or administrative proceeding.

(v) To certify local crimestoppers programs qualified to receive repayments of rewards pursuant to Section 1 of this act.

Provided, that nothing contained in this act shall be construed as requiring the Attorney General to appear and defend or prosecute in any court any cause or proceeding for or on behalf of the Oklahoma Tax Commission, the Board of Managers of the State Insurance Fund, or the Commissioners of the Land Office.

Provided further, that in all appeals from the Corporation Commission to the Supreme Court of Oklahoma in which the state is a party, the Attorney General shall have the right to designate counsel of the Corporation Commission as his legally appointed representative in such appeals, and it shall be the duty of the said Corporation Commission counsel to act when so designated and to consult and advise with the Attorney General regarding such appeals prior to taking action therein.

SECTION 4. This act shall become effective September 1, 1991.

Passed the House of Representatives the 6th day of March, 1991.

Speaker of the House of
Representatives

Passed the Senate the 26th day of March, 1991.

President of the Senate