

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 1007

BY: ROZELL

AS INTRODUCED

AN ACT RELATING TO TO PRISONERS; AMENDING 63 O.S.

1991, SECTION 2-503 (SECTION 32, CHAPTER 216, O.S.L. 1991), WHICH RELATES TO PROPERTY SUBJECT TO FORFEITURE AND 22 O.S. 1991, SECTION 991a, WHICH RELATES TO SENTENCING POWERS OF THE COURT; PROVIDING FOR FORFEITURE OF CERTAIN PROPERTY FOR PAYMENT OF COSTS OF INCARCERATION; PROVIDING FOR FORFEITURE FOR CERTAIN WEAPONS; REQUIRING THE COURT TO ASSESS COSTS OF INCARCERATION AGAINST CERTAIN OFFENDERS; REQUIRING THE DEPARTMENT OF CORRECTION TO ASSESS COSTS OF INCARCERATION; AUTHORIZING THE DEPARTMENT OF CORRECTIONS TO PROMULGATE CERTAIN RULES; DIRECTING METHOD OF COLLECTION; PROVIDING EXCEPTION; DIRECTING THE COURT CLERK TO ESCROW CERTAIN FUNDS; PROVIDING FOR RELEASE OF FUNDS AND OTHER DISPOSITION; REPEALING 63 O.S. 1991, SECTION 2-503 (SECTION 6, CHAPTER 306, O.S.L. 1991), WHICH IS A DUPLICATE SECTION; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 2-503 (Section 32, Chapter 216, O.S.L. 1991), is amended to read as follows:

Section 2-503. A. The following shall be subject to forfeiture:

1. All controlled dangerous substances which have been manufactured, distributed, dispensed, acquired, concealed or possessed in violation of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title.

2. All raw materials, products and equipment of any kind and all drug paraphernalia as defined by the Uniform Controlled Dangerous Substances Act, which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous Substances Act.

3. All property which is used, or intended for use, as a container for property described in paragraphs 1 and 2 of this subsection.

4. All conveyances, including aircraft, vehicles, vessels, or farm implements which are used to transport, conceal, or cultivate for the purpose of distribution as defined in Section 2-101 of this title, or in any manner to facilitate the transportation or cultivation for the purpose of sale or receipt of property described in paragraphs 1 or 2 of this subsection or when such property is unlawfully possessed by an occupant thereof, except that:

- a. no conveyance used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of the Uniform Controlled Dangerous Substances Act unless it shall

appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of the Uniform Controlled Dangerous Substances Act; and

- b. no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and if the act is committed by any person other than such owner the owner shall establish further that the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state.

5. All books, records and research, including formulas, microfilm, tapes and data which are used in violation of the Uniform Controlled Dangerous Substances Act.

6. All things of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Uniform Controlled Dangerous Substances Act.

7. All moneys, coin and currency found in close proximity to forfeitable substances, to forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the importation, manufacture or distribution of substances, which are rebuttably presumed to be forfeitable under this act. The burden of proof is upon claimants of the property to rebut this presumption.

8. All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenance or improvement thereto, which is used, or intended to be used, in any

manner or part, to commit, or to facilitate the commission of, a violation of the Uniform Controlled Dangerous Substances Act which is punishable by imprisonment for more than one (1) year, except that no property right, title or interest shall be forfeited pursuant to this paragraph, by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of that owner.

9. All weapons possessed, used or available for use in any manner to facilitate a violation of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title.

B. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that such property or thing of value was acquired by such person during the period of the violation of the Uniform Controlled Dangerous Substances Act or within a reasonable time after such period and there was no likely source for such property or thing of value other than the violation of the Uniform Controlled Dangerous Substances Act.

C. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that the person has not paid all or part of a fine imposed pursuant to the provisions of Section 2-415 of this title.

D. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that the person has not paid all of the costs of incarceration imposed pursuant to the provisions of Section 3 of this act.

E. All items forfeited in this section shall be forfeited under the procedures established in Section 2-506 of this title. Whenever any item is forfeited pursuant to this section except for items confiscated by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation or the Alcoholic Beverage

Laws Enforcement Commission, the district court of the district shall order that such item, money, or monies derived from the sale of such item be deposited by the state, county or city law enforcement agency which seized the item in the revolving fund provided for in Section 2-506 of this title; provided, such item, money or monies derived from the sale of such item forfeited due to nonpayment of a fine imposed pursuant to the provisions of Section 2-415 of this title shall be apportioned as provided in Section 2-416 of this title. Items, money or monies seized pursuant to subsections A and B of this section shall not be applied or considered toward satisfaction of the fine imposed by Section 2-415 of this title. All raw materials used or intended to be used by persons to unlawfully manufacture or attempt to manufacture any controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act shall be summarily forfeited pursuant to the provisions of Section 2-505 of this title.

~~E.~~ F. All property taken or detained under this section by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation or the Alcoholic Beverage Laws Enforcement Commission shall not be repleviable, but shall remain in the custody of the Bureaus, Department, or Commission, respectively, subject only to the orders and decrees of a court of competent jurisdiction. The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Commissioner of Public Safety, the Director of the Oklahoma State Bureau of Investigation or the Director of the Alcoholic Beverage Laws Enforcement Commission shall follow the procedures outlined in Section 2-506 of this title dealing with notification of seizure, intent of forfeiture, final disposition procedures, and release to innocent claimants with regard to all property included in this section detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma

Department of Public Safety, the Oklahoma State Bureau of Investigation or the Alcoholic Beverage Laws Enforcement Commission. Property taken or detained by the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation or the Alcoholic Beverage Laws Enforcement Commission shall be disposed of or sold pursuant to the provisions of Section 2-508 of this title.

~~F.~~ G. The proceeds of any forfeiture of items seized by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall be distributed as follows:

1. To the bona fide or innocent purchaser, conditional sales vendor or mortgagee of the property, if any, up to the amount of his interest in the property, when the court declaring a forfeiture orders a distribution to such person; and

2. The balance to the Oklahoma State Bureau of Narcotics' revolving fund or the Bureau's agency special account established pursuant to Section 7.2 of Title 62, provided the Bureau may enter into agreements with municipal, county, state or federal law enforcement agencies, assisting in the forfeiture or underlying criminal investigation, to return to such an agency a percentage of said proceeds.

The Bureau may expend up to Five Hundred Thousand Dollars (\$500,000.00) of the forfeited funds within a fiscal year without prior approval of the Legislature. Documentation of such expenditures shall be forwarded to the Governor, Speaker of the House of Representatives and the President Pro Tempore of the Senate on a quarterly basis. Any additional expenditures of forfeited funds shall be pre-approved by the annual appropriations process or the Contingency Review Board.

SECTION 2. 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;

3. commit such person for confinement provided for by law with or without restitution as provided for in this section. The court shall assess the costs of incarceration in any drug-related conviction when confinement is ordered;

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; 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 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.1 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. Beginning on the effective date of this act, the Department of Corrections shall assess each inmate the costs of incarceration. Such costs shall be deemed a debt of the prisoner owed to the Department of Corrections and shall be collected by the Department as provided by law for the collection of other debts, except as provided in subsection C of this section.

B. The Department of Corrections is authorized to promulgate rules necessary to implement the provisions of this act.

C. The Department of Corrections shall present to the court at the time of sentencing for any drug-related conviction the current daily cost of incarceration. The court shall, after determining the period of time the defendant is to be confined in the State Penitentiary, if any, fix and assess the costs of incarceration to be paid from any seized property pursuant to Section 2-503 of Title 63 of the Oklahoma Statutes. Such funds shall be held in escrow by the court clerk. The Department shall submit claims quarterly to the court clerk for release of funds to pay for the prisoner's costs of incarceration, except as follows:

1. If the prisoner is released from the custody of the Department before the funds held in escrow have been depleted, the escrow funds shall be distributed as directed by the Legislature; and

2. If the prisoner is incarcerated for a period of time exceeding the original sentence, or if the funds seized pursuant to Section 2-503 of Title 63 of the Oklahoma Statutes are insufficient to pay the costs of incarceration, the Department shall proceed to assess the debt against the prisoner. Such debt shall then be collected as provided by law for the collection of other debts.

SECTION 4. REPEALER 63 O.S. 1991, Section 2-503 (Section 6, Chapter 306, O.S.L. 1991), is hereby repealed.

SECTION 5. This act shall become effective July 1, 1992.

SECTION 6. 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.

43-2-1910 NP