

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1565

By: Adkins

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 1991, Section 645, which relates to assault, battery, or assault and battery with a sharp or dangerous weapon, 21 O.S. 1991, Section 652, as amended by Section 1, Chapter 192, O.S.L. 1992 (21 O.S. Supp. 1994, Section 652), which relates to shooting with intent to kill and use of a vehicle to facilitate intentional discharge of weapon, 21 O.S. 1991, Section 801, which relates to robbery with firearm or dangerous weapon or imitation firearm, 21 O.S. 1991, Section 888, as amended by Section 2, Chapter 289, O.S.L. 1992 (21 O.S. Supp. 1994, Section 888), which relates to forcible sodomy, 21 O.S. 1991, Section 1115, which relates to rape in the first degree, 21 O.S. 1991, Section 1287, which relates to use of firearm or other dangerous weapon or imitation firearm while committing or attempting to commit a felony, and 21 O.S. 1991, Section 1401, which relates to arson in the first degree; modifying penalties; amending 57 O.S. 1991, Section 332.7, as amended by Section 1, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1994, Section 332.7), which relates to parole; modifying

eligibility for certain persons; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 645, is amended to read as follows:

Section 645. Every person who, with intent to do bodily harm and without justifiable or excusable cause, commits any assault, battery, or assault and battery upon the person of another with any sharp or dangerous weapon, or who, without such cause, shoots at another, with any kind of firearm or air gun or other means whatever, with intent to injure any person, although without the intent to kill such person or to commit any felony, upon conviction is guilty of a felony punishable by imprisonment in the ~~penitentiary~~ State Penitentiary for not less than five (5) years and not exceeding ten (10) years, or by imprisonment in a county jail not exceeding one (1) year.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 652, as amended by Section 1, Chapter 192, O.S.L. 1992 (21 O.S. Supp. 1994, Section 652), is amended to read as follows:

Section 652. A. Every person who intentionally and wrongfully shoots another with or discharges any kind of firearm, with intent to kill any person, shall upon conviction be punished by imprisonment in the State Penitentiary not exceeding life.

B. Every person who uses any vehicle to facilitate the intentional discharge of any kind of firearm, crossbow or other weapon in conscious disregard for the safety of any other person or persons shall upon conviction be punished by imprisonment in the State Penitentiary for a term of not less than two (2) years nor more than twenty (20) years.

C. Any person who commits any assault and battery upon another by means of any deadly weapon, or by such other means or force as is likely to produce death, or in any manner attempts to kill another, or in resisting the execution of any legal process, shall upon conviction be punished by imprisonment in the State Penitentiary for not exceeding less than ten (10) years and not more than twenty (20) years.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 801, is amended to read as follows:

Section 801. Any person or persons who, with the use of any firearms or any other dangerous weapons, whether the firearm is loaded or not, or who uses a blank or imitation firearm capable of raising in the mind of the one threatened with such device a fear that it is a real firearm, attempts to rob or robs any person or persons, or who robs or attempts to rob any place of business, residence or banking institution or any other place inhabited or attended by any person or persons at any time, either day or night, shall be guilty of a felony, and, upon conviction therefor, shall suffer punishment by imprisonment for life, in the State Penitentiary, or imprisonment for a period of time of not less than ~~five (5)~~ ten (10) years, at the discretion of the court, or the jury trying the same.

Upon conviction therefor, any person guilty of three (3) separate and distinct felonies, in violation of this section shall suffer punishment by imprisonment for life, in the State Penitentiary, or for a period of time of not less than ten (10) years, and it is mandatory upon the court to impose no less than the minimum sentence of ten (10) years. The sentence imposed upon such person shall not be reduced to less than ten (10) calendar years, nor suspended, nor shall any person be eligible for probation or parole or receive any deduction from his sentence for good conduct until he shall have served ten (10) calendar years of such sentence.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 888, as amended by Section 2, Chapter 289, O.S.L. 1992 (21 O.S. Supp. 1994, Section 888), is amended to read as follows:

Section 888. A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 of this title, upon conviction, is guilty of a felony punishable by imprisonment in the ~~penitentiary~~ State Penitentiary for a period of not less than ten (10) years and not more than twenty (20) years. Any person convicted of a second violation of this section, where the victim of the second offense is a person under sixteen (16) years of age, shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the State Penitentiary for a term of life or life without parole, in the discretion of the jury, or in case the jury fail or refuse to fix punishment then the same shall be pronounced by the court.

B. The crime of forcible sodomy shall include:

1. Sodomy committed by a person over eighteen (18) years of age upon a person under sixteen (16) years of age; or

2. Sodomy committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime; or

3. Sodomy accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the victim or the person committing the crime.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 1115, is amended to read as follows:

Section 1115. Rape in the first degree is punishable by death or imprisonment in the ~~penitentiary,~~ State Penitentiary for not less

than ~~five (5)~~ twenty (20) years, in the discretion of the jury, or in case the jury fail or refuse to fix the punishment then the same shall be pronounced by the court.

SECTION 6. AMENDATORY 21 O.S. 1991, Section 1287, is amended to read as follows:

Section 1287. Any person who, while committing or attempting to commit a felony, possesses a firearm or any other offensive weapon in such commission or attempt, whether the firearm is loaded or not, or who possesses a blank or imitation firearm capable of raising in the mind of one threatened with such device a fear that it is a real firearm, or who possesses an air gun or carbon dioxide or other gas-filled weapon, electronic dart gun, knife, dagger, dirk, switchblade knife, blackjack, ax, loaded cane, billy, hand chain or metal knuckles, in addition to the penalty provided by statute for the felony committed or attempted, upon conviction shall be guilty of a felony for possessing such weapon or device, which shall be a separate offense, and shall be punishable by imprisonment in the ~~penitentiary~~ State Penitentiary for a period of not less than ~~two~~ five (5) years nor for more than ten (10) years for the first offense, and for a period of not less than ten (10) years nor for more than thirty (30) years for any second or subsequent offense.

SECTION 7. AMENDATORY 21 O.S. 1991, Section 1401, is amended to read as follows:

Section 1401. Any person who willfully and maliciously sets fire to or burns or by the use of any explosive device or substance destroys in whole or in part, or causes to be burned or destroyed, or aids, counsels or procures the burning or destruction of any building or structure or contents thereof, inhabited or occupied by one or more persons, whether the property of himself or another, shall be guilty of arson in the first degree, and upon conviction thereof shall be punished by a fine not to exceed Twenty-five Thousand Dollars (\$25,000.00) or be confined to the ~~penitentiary~~

State Penitentiary for not less than ten (10) years nor more than thirty-five (35) years, or both such fine and imprisonment.

SECTION 8. AMENDATORY 57 O.S. 1991, Section 332.7, as amended by Section 1, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1994, Section 332.7), is amended to read as follows:

Section 332.7 A. ~~Upon~~ Except as provided in subsections B and C of this section, upon completion of one-third (1/3) of the sentence of any person in the custody of the Department of Corrections, such person shall be eligible for consideration for a parole, and it shall be the duty of the Pardon and Parole Board to cause an examination to be made at the penal institution where the person is assigned, and to make inquiry into the conduct and the record of the said person during his custody in the Department of Corrections, which shall be considered as a basis for consideration of said person for recommendation to the Governor for parole. However, the Pardon and Parole Board shall not be required to consider for parole any person who has completed one-third (1/3) of his sentence if the person has participated in a riot or in the taking of hostages, or has been placed on escape status, while in the custody of the Department of Corrections. The Pardon and Parole Board shall adopt policies and procedures governing parole consideration for such persons.

B. The Pardon and Parole Board shall not recommend to the Governor any person who has been convicted of three or more felonies arising out of separate and distinct transactions, with three or more incarcerations for such felonies, unless such person shall have served the lesser of at least one-third (1/3) of the sentence imposed, or ten (10) years; provided that whenever the population of the prison system exceeds ninety-five percent (95%) of the capacity as certified by the State Board of Corrections, the Pardon and Parole Board may, at its discretion, recommend to the Governor for parole any person who is incarcerated for a nonviolent offense not

involving injury to a person and who is within six (6) months of his or her statutory parole eligibility date; provided further, if the felony for which the person is incarcerated is a crime provided for in subsection C of this section, the provisions of subsection C shall take precedence over this subsection.

C. The Pardon and Parole Board shall not recommend to the Governor any person who has been convicted of murder in the first degree and who has received a sentence of life imprisonment, unless the person shall have been incarcerated at least thirty (30) years for the crime. The Pardon and Parole Board shall not recommend any person who has been convicted of rape in the first degree, unless the person shall have served a minimum of twenty (20) years' incarceration for the crime imposed. The Pardon and Parole Board shall not recommend to the Governor any person who has been convicted of kidnapping for purpose of extortion, robbery with a dangerous weapon, arson in the first degree, shooting with intent to kill, or discharge of a weapon from a vehicle pursuant to subsection B of Section 652 of Title 21 of the Oklahoma Statutes, unless the person shall have served at least ten (10) years of the sentence that was imposed. The Pardon and Parole Board shall not recommend to the Governor any person who has been convicted of assault and battery with a dangerous weapon or use of a firearm or other offensive weapon while committing a felony, unless the person shall have served at least five (5) years of the sentence that was imposed.

D. Upon application of any person convicted and sentenced by a court of this state and relinquished to the custody of another state or federal authorities pursuant to Section 61.2 of Title 21 of the Oklahoma Statutes, the Pardon and Parole Board may determine a parole consideration date consistent with the provisions of this section and criteria established by the Pardon and Parole Board.

~~D.~~ E. No person who is appearing out of the normal processing procedure shall be eligible for consideration for parole without the concurrence of at least three (3) members of the Pardon and Parole Board.

SECTION 9. This act shall become effective November 1, 1995.

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