

SHORT TITLE: Punishments; modifying certain enhancements; providing fines and restitution; providing limitation; construing provisions; defining terms; enhancing third offense of petit larceny; repealer; emergency.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 558

By: Wilkerson

AS INTRODUCED

An Act relating to punishments; amending 21 O.S.

1991, Sections 42, 51, 51A and 1706, as amended by Section 1, Chapter 288, O.S.L. 1993 (21 O.S. Supp. 1996, Section 1706), which relate to attempts to commit offense, second and subsequent convictions, limitations of enhancement, and petit larceny; amending 22 O.S. 1991, Section 991a-9, which relates to the Elderly and Incapacitated Victim's Protection Program; modifying language; providing punishments for attempts to commit offense; modifying certain enhancements of punishments; modifying mandatory minimum imprisonment for second and subsequent convictions; providing for fines and restitution on subsequent convictions; providing limitation; construing provisions; defining terms; adding restitution to penalty for petit larceny; setting enhanced punishment for third offense of petit larceny; conforming language; repealing 21 O.S. 1991, Section 52, which relates to enhanced punishment after conviction of petit larceny; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 42, is amended to read as follows:

Section 42. Every person who attempts to commit any crime, and in such attempt does any act toward the commission of ~~such~~ the crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of ~~such~~ the attempt, as follows:

1. If the offense ~~so~~ attempted ~~be~~ is a felony punishable by imprisonment in the ~~penitentiary~~ custody of the Department of Corrections for ~~four (4)~~ five (5) years or more, ~~or by imprisonment in a county jail,~~ then the person guilty of ~~such~~ the attempt ~~is punishable~~ shall, upon conviction, be punished by imprisonment in the ~~penitentiary, or in a county jail, as the case may be,~~ custody of the Department of Corrections for a term not exceeding one-half (1/2) of the longest maximum term of imprisonment prescribed ~~upon a conviction~~ for the offense ~~so~~ attempted.

2. If the offense ~~so~~ attempted ~~be~~ is a felony punishable by imprisonment in the ~~penitentiary~~ custody of the Department of Corrections for any ~~time~~ term less than ~~four (4)~~ five (5) years, then the person guilty of ~~such~~ the attempt ~~is punishable~~ shall, upon conviction, be punished by imprisonment in a county jail for not more than one (1) year.

3. If the offense ~~so~~ attempted ~~be~~ is punishable by a fine only, then the ~~offender convicted~~ person guilty of ~~such~~ the attempt ~~is punishable~~ shall, upon conviction, be punished by a fine not exceeding one-half (1/2) the ~~largest~~ maximum fine ~~which may be imposed upon a conviction of~~ prescribed by law for the offense ~~so~~ attempted.

4. If the offense attempted is a misdemeanor punishable by imprisonment in the county jail, then the person guilty of the attempt shall, upon conviction, be punished by imprisonment in the

county jail for a term not exceeding one-half (1/2) of the maximum term of imprisonment prescribed by law for the offense attempted.

5. If the offense ~~so attempted~~ ~~be~~ is punishable by imprisonment and by a fine, the ~~offender convicted~~ person guilty of such ~~the~~ attempt may, upon conviction, be punished by both imprisonment and fine, ~~not exceeding one-half (1/2) the longest term of imprisonment and one-half the largest fine which may be imposed upon a conviction for the offense so attempted;~~ provided that the term of imprisonment and amount of the fine shall be governed by the provisions of paragraphs 1 through 4 of this section.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 51, is amended to read as follows:

Section 51. A. ~~Except as otherwise provided in Sections 1 through 7 of this act~~ Where no provision is made by law for the punishment of a second or subsequent offense, every or where a person who, having been previously convicted of any felony offense punishable by imprisonment in the State Penitentiary, commits any ~~crime after such conviction is punishable therefor~~ other felony offense within a ten-year period since the completion of the sentence imposed on the former conviction, punishment may be imposed as follows:

1. If the current felony offense ~~of~~ for which ~~such~~ the person is ~~subsequently convicted is such that upon a first conviction an offender would be punishable~~ a violent felony offense and the person has a prior conviction for a violent felony offense within a ten-year period since the completion of the sentence imposed on any former conviction, the person may be punished by imprisonment in the State Penitentiary custody of the Department of Corrections for ~~any~~ a term ~~exceeding~~ not less than five (5) years, ~~such person is punishable by imprisonment in the State Penitentiary for a term not less than ten (10) years,~~ nor more than the maximum term of imprisonment prescribed by law for the offense.

2. If the current felony offense for which the person is convicted is a violent felony offense and the person has two prior violent felony offenses within a ten-year period since the completion of the sentence imposed on any former conviction, the person may be punished by imprisonment in the custody of the Department of Corrections for a term not less than ten (10) years, nor more than the maximum term of imprisonment prescribed by law for the offense.

3. If the current felony offense for which the person is convicted is a violent felony offense and the person has more than two prior violent felony offenses within a ten-year period since the completion of the sentence imposed on any former conviction, the person may be punished by imprisonment in the custody of the Department of Corrections for a term not less than fifteen (15) years, nor more than the maximum term of imprisonment prescribed by law for the offense.

4. If the current felony offense for which the person is convicted is a violent felony offense and the person has prior felony offenses, but no prior violent felony offense within a ten-year period since the completion of the sentence imposed on any former conviction, then the person may be punished by imprisonment in the custody of the Department of Corrections for a term not less than five (5) years, nor more than the maximum term of imprisonment prescribed by law for the offense.

5. If the current felony offense for which the person is convicted is a nonviolent felony offense and the person has a prior violent felony offense within a ten-year period since the completion of the sentence imposed on any former conviction, then the person may be punished by imprisonment in the custody of the Department of Corrections for a term not less than two (2) years, nor more than the maximum term of imprisonment prescribed by law for the offense.

6. If ~~such subsequent~~ the current felony offense for which the person is ~~such that upon a first conviction the offender would be punishable by imprisonment in the State Penitentiary~~ convicted is a nonviolent felony offense and the person has one or more prior nonviolent felony offenses for which the person was imprisoned for five (5) years, or any less term within the preceding ten-year period, then the person ~~convicted of such subsequent offense is punishable~~ may be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term not ~~exceeding ten (10) years~~ less than two (2) years, nor more than the maximum term of imprisonment prescribed by law for the offense.

~~3.~~ 7. If ~~such subsequent conviction is for petit larceny,~~ the current felony offense for which the person is convicted ~~of such subsequent~~ is a nonviolent felony offense ~~is punishable~~ and the person has one or more nonviolent felony offenses for which the person was imprisoned for a term of more than five (5) years within the preceding ten-year period, the person may be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term not ~~exceeding~~ less than five (5) years, nor more than the maximum term of imprisonment prescribed by law for the offense.

B. Every person ~~who, having been twice convicted~~ two or more times of felony offenses, ~~commits a third, or thereafter, felony offenses within ten (10) years of the date following the completion of the execution of the sentence, shall~~ may be punished by imprisonment in the ~~State Penitentiary~~ for a term of not less than ~~twenty (20) years.~~ Felony a fine not exceeding twice the maximum amount prescribed by law for the offense. The fine prescribed in this subsection shall be in addition to any other penalty prescribed by law for the offense.

C. Every person convicted two or more times of felony offenses, who receives a deferred, suspended sentence shall be required to

make restitution to the victims or the state in an amount and pursuant to a payment schedule to be determined by the court.

D. For purposes of applying the provisions of this section, felony offenses relied upon as prior felony convictions shall not have arisen out of the same transaction or occurrence or series of events closely related in time and location, but may be convictions arising from any state or federal jurisdiction when the offense if committed in this state would be a felony offense. The provisions of this section shall not be applied in addition to or in lieu of any other provision of law specifying a penalty for a second or subsequent conviction for an offense.

E. Nothing in this section shall abrogate or affect the punishment by death in all crimes now or hereafter made punishable by death.

F. If the mandatory term of imprisonment prescribed in this section for a habitual offender exceeds the maximum term of imprisonment prescribed by law for a specific offense, then the term of imprisonment imposed shall be the mandatory term established in this section.

G. As used in this section:

1. "Violent felony offense" means a crime constituting assaultive behavior, threat of or actual physical injury or death to any person or animal, use of a weapon in the commission of an offense, arson, or trafficking in illegal drugs for which the punishment is a term of imprisonment in the custody of a state correctional facility for more than five (5) years; and

2. "Nonviolent felony offense" means any crime constituting possession, distribution, or use of any controlled substance, possession or use of intoxicating substance, damage to, alteration of, or loss of property or rights, theft, fraud, malicious mischief, licensing violations, or breach of office, for which the punishment

is a term of imprisonment in the custody of a state correctional facility for more than one (1) year.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 51A, is amended to read as follows:

Section 51A. No person shall be sentenced as a second and subsequent offender under the provisions of Section 51 of ~~Title 21 this title~~, or pursuant to any other ~~section of the Oklahoma Statutes~~ provision of law, when a period of ten (10) years has elapsed since the completion of the sentence imposed on the former conviction; ~~provided, said person has not, in the meantime, been convicted of a misdemeanor involving moral turpitude or felony.~~

SECTION 4. AMENDATORY 21 O.S. 1991, Section 1706, as amended by Section 1, Chapter 288, O.S.L. 1993 (21 O.S. Supp. 1996, Section 1706), is amended to read as follows:

Section 1706. Petit larceny shall be punishable by a fine of not less than Ten Dollars (\$10.00) or more than Five Hundred Dollars (\$500.00), ~~or~~ by imprisonment in the county jail for a term not to exceed six (6) months, ~~or~~ by restitution to the victim or state in an amount to be determined by the court, or by both such a fine, restitution, and imprisonment, at the discretion of the court. Every person who, having been convicted of petit larceny, or of an attempt to commit petit larceny, commits any third or subsequent offense of petit larceny, or attempt to commit petit larceny, shall be guilty of a felony. Any violator, upon conviction, shall be punished by imprisonment in the custody of the Department of Corrections for a term not exceeding five (5) years, by a fine of One Thousand Dollars (\$1,000.00), by restitution to the victim or state in an amount to be determined by the court, or by a fine, imprisonment and restitution, in the discretion of the court.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 991a-9, is amended to read as follows:

Section 991a-9. ~~Whenever~~ For purposes of the Elderly and Incapacitated Victim's Protection Program, whenever a person is convicted of an offense enumerated in Section 4 991a-8 of this ~~act~~ title in which the victim is elderly or incapacitated, the court shall upon conviction:

1. Commit the defendant for confinement as provided by law; provided, the first thirty (30) days of the sentence shall not be subject to probation, suspension or deferral; provided further, this mandatory minimum period of confinement shall be served in the county jail as a condition of a suspended or deferred sentence, pursuant to Section 991a of ~~Title 22 of the Oklahoma Statutes~~ this title and may be served by night or weekend incarceration pursuant to Section 991a-2 of this title; and

2. a. Require restitution be paid to the victim for out-of-pocket expenses, loss or damage to property and medical expenses for injury proximately caused by the conduct of the defendant pursuant to Section ~~6~~ 991a-10 of this ~~act~~ title; or

b. Assign the offender to perform a required term of community service, according to a schedule consistent with the employment and family responsibility of the person convicted; or

c. Require restitution as provided in subparagraph a of this paragraph and community service as provided in subparagraph b of this paragraph; and

3. The court may further impose a fine or any other penalty ~~otherwise provided~~ prescribed by law.

SECTION 6. REPEALER 21 O.S. 1991, Section 52, is hereby repealed.

SECTION 7. 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.

46-1-0596

NP