

ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 565

By: Wilkerson of the Senate

and

Askins of the House

(crimes and punishments - Truth In Sentencing Act -

effective date -

emergency)

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

"(truth in sentencing - Oklahoma Truth in

Sentencing Act - amending 21 O.S., Sections 17,

1435, 1436, 1111, 1273 and 540A - offense

enhancers - burglary - codification - effective

date -

emergency)

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1125 of Title 21, unless there is created a duplication in numbering, reads as follows:

Any teacher employed by a public school district or private school who engages in illicit sexual conduct with a student enrolled in the public school district or private school where the teacher is employed shall be guilty of a felony, and upon conviction shall be punishable by imprisonment in the custody of the Department of Corrections for a period of not less than one (1) year nor more than fifteen (15) years. Additionally, upon conviction the teacher shall

provide restitution to the public school district or private school for any monies paid to the teacher as salary from the date of suspension to the date of conviction.

SECTION 2. AMENDATORY Section 7, Chapter 133, O.S.L. 1997, as amended by Section 1, Chapter 333, O.S.L. 1997 (21 O.S. Supp. 1998, Section 17), is amended to read as follows:

Section 17. A. The sentencing ranges in the matrices shall be enhanced in accordance with the following provisions based on the circumstances of the commission of the offense, however the enhancement provision shall not apply to conduct which is an element of the offense. The following shall be offense enhancers:

1. If the offender committed the current offense with the use of a firearm within the immediate possession and control of the offender then the sentencing range shall be enhanced by two levels on the sentencing matrices;

2. If the victim of the offense is over sixty-two (62) years, under twelve (12) years, or is disabled by reason of mental or physical illness to such extent that the victim lacks the ability to effectively protect the victim's property or person, then the sentencing range shall be enhanced by two levels on the sentencing matrices;

3. If the property involved in a theft, embezzlement or fraud crime is of great value, then the punishment for committing that crime shall be enhanced based on the value of the property. If the commission of the crime involved the use of drug proceeds then the punishment for committing the crime shall be enhanced by the amount of drug proceeds involved. The "amount involved" is a calculation of the value of the property involved in the crime, the amount of money that was stolen, embezzled or obtained by fraud, or the amount of drug proceeds which is utilized.

a. If the amount involved is ~~greater than~~ Two Thousand Five Hundred Dollars (\$2,500.00) or more but less than

Ten Thousand Dollars (\$10,000.00) then the sentencing range shall be enhanced two levels on the sentencing matrices.

b. If the amount involved is greater than Ten Thousand Dollars (\$10,000.00) but ~~less~~ not more than One Hundred Thousand Dollars (\$100,000.00) then the sentencing range shall be enhanced by five levels on the sentencing matrices.

c. If the amount involved is greater than One Hundred Thousand Dollars (\$100,000.00) but ~~less~~ not more than Five Hundred Thousand Dollars (\$500,000.00) then the sentencing range shall be enhanced by seven levels on the sentencing matrices.

d. If the amount involved is greater than Five Hundred Thousand Dollars (\$500,000.00) then the sentencing range shall be enhanced to the highest level on the sentencing matrices;

4. If in the commission of the crimes, the offender tortured or maimed the victim then the sentencing range shall be enhanced two levels on the sentencing matrices;

5. If the offender committed a Schedule N-2 or N-3 offense of trafficking, distributing, dispensing, purchasing, transporting with the intent to distribute, or possessing with the intent to distribute a controlled dangerous substance, or a synthetic of the controlled dangerous substance, in or on, or within one thousand (1,000) feet of the real property comprising a public or private elementary or secondary school, public or private college or university, or other institution of higher education, recreation center or public park, including state parks and recreation areas, or public housing project, or in the presence of any child under twelve (12) years of age, then the sentencing range shall be enhanced by one level on the sentencing matrices; and

6. If the offender committed a Schedule N-2 or N-3 offense of trafficking, distributing, dispensing, purchasing, transporting with the intent to distribute, or possessing with the intent to distribute a controlled dangerous substance, or a synthetic of the controlled dangerous substance, by using or soliciting the services of a person less than eighteen (18) years of age, the sentencing range shall be enhanced by one level on the sentencing matrices, if the offender was at least eighteen (18) years of age at the time of the offense.

B. Every person who, having been previously convicted of an offense in this state or a felony in another state, commits any crime after such conviction, shall be punishable, upon conviction of a subsequently committed crime, by the following prior record enhancers, unless another penalty for subsequent convictions is provided by law:

1. If the prior offense is murder in the first degree or any other offense which is a Schedule A, Schedule N-1, or Schedule S-1 crime then the sentencing range shall be enhanced by six levels on the sentencing matrices;

2. If the prior offense is a Schedule B, Schedule N-2, or Schedule S-2 crime, then the sentencing range shall be enhanced by four levels on the sentencing matrices;

3. If the prior offense is a Schedule C crime, then the sentencing range shall be enhanced by two levels on the sentencing matrices;

4. If the prior offense is a Schedule D, Schedule D-1, Schedule N-3, Schedule N-4, or Schedule S-3 crime, then the sentencing range shall be enhanced by one level on the sentencing matrices; and

5. If the prior offense is a Schedule D-2, Schedule E, Schedule F, Schedule G, Schedule H, Schedule I-1, Schedule I-2, Schedule I-3, Schedule N-5, or Schedule S-4 crime, then the sentencing range shall be enhanced by one level on the sentencing matrices.

C. 1. If the person has been previously convicted of two or more felonies which do not arise out of the same transaction, occurrence, or series of events closely related in time and location, the sentencing range shall be enhanced based on each prior conviction, unless the prior convictions were concurrent sentences.

2. If the person has been previously convicted of two or more felonies which the defendant proved arose out of the same transaction, occurrence, or series of events closely related in time and location, the enhanced range of sentence for the current offense shall be determined on the schedule of punishment for the highest scheduled prior offense arising from that transaction.

3. If the person has been previously convicted of two or more felonies which did not arise out of the same transaction, occurrence, or series of events closely related in time and location but were concurrent sentences, the sentencing range shall be enhanced based on the maximum prior conviction plus one level.

D. No person shall be sentenced with a prior record enhancer when a period of ten (10) years has elapsed between the date of full completion of the sentence for the prior conviction and the date of the commission of the offense sought to be enhanced. For the purpose of this subsection, the date of full completion of the prior sentence shall be computed as though said sentence had been served in full, and no methods of sentence reduction shall apply towards calculating this time period. Provided however, that the ten-year limitation on a prior conviction shall be tolled by an intervening conviction.

E. Unless otherwise provided by law, the enhancements provided by the Oklahoma Truth in Sentencing Act are cumulative, in that all applicable level increases are added together to produce the applicable sentencing range.

F. The state is required to provide notice of specific acts or prior convictions upon which the state will rely at sentencing for

enhancement. ~~Unless otherwise ordered by the court~~ waived by both the defendant and the state, the notice shall be filed by the state not less than thirty (30) days prior to the trial on the merits. If, prior to that time, the defendant indicates to the court that the defendant wishes to plead guilty, the court shall grant the state ten (10) days from that date to file the notice required by this subsection, if requested by the state.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 1435, is amended to read as follows:

Section 1435. Every person who breaks and enters ~~any building~~ the unoccupied dwelling house of another or any part of ~~any building, room, booth, tent, railroad car, automobile, truck, trailer, vessel or other structure or erection,~~ the unoccupied dwelling house of another in which any property is kept, ~~or breaks into or forcibly opens, any coin operated or vending machine or device~~ with intent to steal any property therein or to commit any felony, is guilty of burglary in the second degree.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1435.1 of Title 21, unless there is created a duplication in numbering, reads as follows:

Every person who breaks and enters into any building, structure or erection other than a dwelling house, or any booth, tent, railroad car, automobile, truck, trailer, or vessel, in which any property is kept, with intent to steal any property therein or to commit any felony, is guilty of burglary in the third degree.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1435.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

Every person who breaks into or forcibly opens any coin-operated or vending machine or device, with intent to steal any property therein or to commit any felony, is guilty of burglary in the fourth degree.

SECTION 6. AMENDATORY 21 O.S. 1991, Section 1436, as amended by Section 357, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998, Section 1436), is amended to read as follows:

Section 1436. A. Burglary in the first degree is a Schedule D felony.

B. Burglary in the second degree is a Schedule D-1 felony.

C. Burglary in the third degree is a Schedule E felony.

D. Burglary in the fourth degree is a Schedule G felony.

SECTION 7. AMENDATORY 21 O.S. 1991, Section 1111, as last amended by Section 1, Chapter 22, O.S.L. 1995 (21 O.S. Supp. 1998, Section 1111), is amended to read as follows:

Section 1111. A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances:

1. Where the victim is under sixteen (16) years of age; or

2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent; or

3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person; or

4. Where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit; or

5. Where the victim is at the time unconscious of the nature of the act and this is known to the accused; or

6. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused or by the accused in collusion with ~~such~~ the spouse with

intent to induce ~~such~~ that belief. In all cases of collusion between the accused and the spouse to accomplish such act, both the spouse and the accused, upon conviction, shall be deemed guilty of rape; or

7. Where the victim is under the legal custody or supervision of a state agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, county, municipal or political subdivision employee or an employee of a contractor of the state, a county, a municipality or a political subdivision that exercises authority over the victim.

B. Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.

SECTION 8. AMENDATORY 21 O.S. 1991, Section 1273, as last amended by Section 29, Chapter 272, O.S.L. 1995 (21 O.S. Supp. 1998, Section 1273), is amended to read as follows:

Section 1273.

ALLOWING MINORS TO POSSESS FIREARMS

A. It shall be unlawful for any person within this state to sell or give to any child any of the arms or weapons designated in Section 1272 of this title; provided, the provisions of this section shall not prohibit a parent from giving his or her child a rifle or shotgun for participation in hunting animals or fowl, hunter safety classes, target shooting, skeet, trap or other recognized sporting events, except as provided in subsection B of this section.

B. It shall be unlawful for any parent or guardian to intentionally, knowingly, or recklessly permit his or her child to possess any of the arms or weapons designated in Section 1272 of this title, including any rifle or shotgun, if such parent is aware of a substantial risk that the child will use the weapon to commit a criminal offense or if the child has either been adjudicated a

delinquent or has been convicted as an adult for any criminal offense.

C. It shall be unlawful for any child to possess any of the arms or weapons designated in Section 1272 of this title, except rifles or shotguns used for participation in hunting animals or fowl, hunter safety classes, target shooting, skeet, trap or other recognized sporting event. Provided, the possession of rifles or shotguns authorized by this section shall not authorize the possession of such weapons by any person who is subject to the provisions of Section 1283 of this title.

D. Any person violating the provisions of this section shall, upon conviction, be punished as provided in Section 1276 of this title, and, any child violating the provisions of this section shall be subject to adjudication as a delinquent. Any person adjudicated as a delinquent for a violation of this section shall be required to perform not less than one hundred (100) hours of community service and the Department of Public Safety shall suspend or not issue a driver license to that person for a period of one (1) year from the date of disposition of the juvenile case or one (1) year from the date the person becomes eligible to receive a driver license. In addition, any person violating the provisions of this section shall be liable for civil damages for any injury or death to any person and for any damage to property resulting from any discharge of a firearm or use of any other weapon. Any person convicted of violating the provisions of this section after having been issued a concealed handgun license pursuant to the provisions of the Oklahoma Self-Defense Act, Sections 1 through 25 of this act, may be liable for an administrative violation as provided in Section 1276 of this title.

E. As used in this section, "child" means a person under eighteen (18) years of age.

SECTION 9. AMENDATORY 21 O.S. 1991, Section 540A, as last amended by Section 210, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998, Section 540A), is amended to read as follows:

Section 540A. A. Any operator of a motor vehicle who has received a visual and audible signal, a red light and a siren from a peace officer driving a motor vehicle showing the same to be an official police, sheriff, highway patrol or state game ranger vehicle directing the said operator to bring ~~his~~ the vehicle of that operator to a stop and who willfully increases ~~his~~ the speed or extinguishes ~~his~~ the lights of the vehicle in an attempt to elude such peace officer, or willfully attempts in any other manner to elude the peace officer, or who does elude such peace officer, is guilty of a misdemeanor. The peace officer, while attempting to stop a violator of this section, may communicate a request for the assistance of other peace officers from any office, department or agency. Any peace officer within this state having knowledge of such request is authorized to render such assistance in stopping the violator and may effect an arrest under this section upon probable cause. Violation of this subsection shall constitute a misdemeanor and shall be punishable by not more than one (1) year imprisonment in the county jail or by a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Dollars (\$2,000.00) or by both such fine and imprisonment. A second or subsequent violation of this subsection shall be punishable by not more than one (1) year in the county jail or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) or both such fine and imprisonment.

B. ~~1.~~ Any person who ~~causes an accident,~~ while eluding or attempting to elude an officer, ~~resulting in great bodily injury to any person other than himself while driving~~ drives or ~~operating~~ operates a motor vehicle within this state ~~and who is~~ in violation of the provisions of subsection A of this section in a manner

endangering human life or property may be charged with a violation of the provisions of this subsection. Any person who is convicted of a violation of the provisions of this subsection shall be deemed guilty of a felony. The fine for a violation of this subsection shall not be more than Five Thousand Dollars (\$5,000.00). Such fine shall be in addition to any other punishment provided by law and shall not be in lieu of other punishment.

~~2. As used in this subsection, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.~~

SECTION 10. Sections 1 through 8 of this act shall become effective July 1, 1999.

SECTION 11. Section 9 of this act shall become effective November 1, 1999.

SECTION 12. 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 14th day of April, 1999.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1999.

President of the Senate