

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 565

By: Wilkerson of the Senate

and

6 Askins of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to truth in sentencing; amending
12 provisions of the Oklahoma Truth in Sentencing Act;
13 amending Section 7, Chapter 133, O.S.L. 1997, as
14 amended by Section 1, Chapter 333, O.S.L. 1997 (21
15 O.S. Supp. 1998, Section 17), which relates to
16 offense enhancers; modifying ranges of monetary value
17 enhancers; modifying notification requirements for
18 cases in which state intends to seek penalty
19 enhancement; amending 21 O.S. 1991, Section 1435,
20 which relates to burglary in the second degree;
21 modifying crime of burglary in the second degree;
22 creating crimes of burglary in the third and fourth
23 degrees; amending 21 O.S. 1991, Section 1436, as
24 amended by Section 357, Chapter 133, O.S.L. 1997 (21
25 O.S. Supp. 1998, Section 1436), which relates to
26 felony schedule for burglary; modifying schedule for
27 burglary in the second degree; adding scheduling for
28 burglary in the third and fourth degrees; providing
29 for codification; providing an effective date; and
30 declaring an emergency.
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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. 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

1 enhancement provision shall not apply to conduct which is an element
2 of the offense. The following shall be offense enhancers:

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

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

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

22 a. If the amount involved is ~~greater than~~ Two Thousand
23 Five Hundred Dollars (\$2,500.00) or more but less than
24 Ten Thousand Dollars (\$10,000.00) then the sentencing
25 range shall be enhanced two levels on the sentencing
26 matrices.

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

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

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

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

13 5. If the offender committed a Schedule N-2 or N-3 offense of
14 trafficking, distributing, dispensing, purchasing, transporting with
15 the intent to distribute, or possessing with the intent to
16 distribute a controlled dangerous substance, or a synthetic of the
17 controlled dangerous substance, in or on, or within one thousand
18 (1,000) feet of the real property comprising a public or private
19 elementary or secondary school, public or private college or
20 university, or other institution of higher education, recreation
21 center or public park, including state parks and recreation areas,
22 or public housing project, or in the presence of any child under
23 twelve (12) years of age, then the sentencing range shall be
24 enhanced by one level on the sentencing matrices; and

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

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

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

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

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

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

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

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

31 2. If the person has been previously convicted of two or more
32 felonies which the defendant proved arose out of the same

1 transaction, occurrence, or series of events closely related in time
2 and location, the enhanced range of sentence for the current offense
3 shall be determined on the schedule of punishment for the highest
4 scheduled prior offense arising from that transaction.

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

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

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

24 F. The state is required to provide notice of specific acts or
25 prior convictions upon which the state will rely at sentencing for
26 enhancement. Unless otherwise ordered by the court waived by both
27 the defendant and the state, the notice shall be filed by the state
28 not less than thirty (30) days prior to the trial on the merits.
29 If, prior to that time, the defendant indicates to the court that
30 the defendant wishes to plead guilty, the court shall grant the
31 state ten (10) days from that date to file the notice required by
32 this subsection, if requested by the state.

1 SECTION 2. AMENDATORY 21 O.S. 1991, Section 1435, is
2 amended to read as follows:

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

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1435.1 of Title 21, unless there
13 is created a duplication in numbering, reads as follows:

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

19 SECTION 4. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1435.2 of Title 21, unless there
21 is created a duplication in numbering, reads as follows:

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

26 SECTION 5. AMENDATORY 21 O.S. 1991, Section 1436, as
27 amended by Section 357, Chapter 133, O.S.L. 1997 (21 O.S. Supp.
28 1998, Section 1436), is amended to read as follows:

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

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

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

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

2 SECTION 6. This act shall become effective July 1, 1999.

3 SECTION 7. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

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8 47-1-6723 SD 6/11/15