

HOUSE OF REPRESENTATIVES  
Monday, February 22, 1999

## Committee Substitute for House Bill No. 1003

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1003 -- By BENSON of the House and TAYLOR of the Senate.

An Act relating to truth in sentencing; amending provisions of the Oklahoma Truth in Sentencing Act; amending Section 7, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998, Section 17), which relates to offense enhancers; modifying ranges of monetary value enhancers; modifying notification requirements for cases in which state intends to seek penalty enhancement; amending 21 O.S. 1991, Section 1435, which relates to burglary in the second degree; modifying crime of burglary in the second degree; creating crimes of burglary in the third and fourth degrees; amending 21 O.S. 1991, 1436, as amended by Section 357, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998, Section 1436), which relates to felony schedule for burglary; modifying schedule for burglary in the second degree; adding scheduling for burglary in the third and fourth degrees; 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 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 2. 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 3. 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 4. 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 5. 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 6. This act shall become effective July 1, 1999.

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.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-18-99 -- DO PASS, As Coauthored.