STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 832 By: Shurden

COMMITTEE SUBSTITUTE

[criminal procedure - Criminal Resentencing Act - reduction of certain criminal sentences - codification - effective date - emergency]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 991a-1.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Criminal Resentencing Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 991a-1.1a of Title 22, unless there is created a duplication in numbering, reads as follows:

When a person has been convicted and sentenced to imprisonment in a state correctional facility or jail for a felony offense, the court may at any time on its own motion and shall on motion of the defense or prosecution, set a hearing to consider resentencing the felony offender to any other sentence allowed by law for the offense; provided, the resentencing must have the effect of reducing the sentence length, modifying consecutive sentences to concurrent sentences, removing or dismissing conditions of a sentence including provisions for a split sentence or suspended sentence, or modifying a plea agreement including adjustments to charges, counts and penalty provisions.

Upon motion, the court shall set a hearing. The defendant need not be present but shall be represented by defense counsel. Evidence provided for resentencing shall be based upon the records and documentation provided to the court from the Department of Corrections, the defense, the prosecution, and the Criminal Justice Resource Center. The court may determine, in its discretion, that the interests of justice will be served by resentencing the offender based upon a jacket review and other documentation. The prosecutor and the Department shall not be required to be present at the resentencing hearing and may waive appearance. The decision of the court shall be final and not appealable, except on grounds that the defendant's sentence was lengthened.

The Department of Corrections shall provide the court with the offender's evaluation report prepared by the Lexington Assessment and Reception Center at the time of reception and any other information pertaining to the defendant in the Department records. The Oklahoma Criminal Justice Resource Center shall provide the court with current data on receptions, average length of sentence imposed for similar offenses within the state, average length of incarceration for similar offenses, cost of incarceration, population data, and other statistical information relevant to sentencing. In addition to other information provided by the Department, the defense, the prosecution and the Oklahoma Criminal Justice Resource Center, the Court shall consider: any victim impact statements, proof of treatment and education, family impact statements, recidivism data, correspondence, and other relevant information.

The purpose of a resentencing hearing shall be to:

1. Bring sentences into compliance with any provision of law repealing or reducing penalty provisions enacted since sentencing;

2. Reduce prison overcrowding by adjusting nonviolent offender sentences to preserve space for violent offenders;

3. Achieve uniformity and fairness in sentences;

4. Provide access for eligible offenders to community treatment, educational, and medical resources; and

5. Grant opportunity to offenders to be accountable to victims through restitution and to reunite with family members following a rehabilitation plan and demonstrated change in conduct and behavior.

When the court clerk enters a judgment of resentence, a copy shall be immediately transmitted to the Department of Corrections for immediate action by the Department in relation to security classification, earned credits, treatment opportunity, parole eligibility and, if ordered, release of the designated offender. The Department shall not retain any resentenced offender contrary to the order of the court in the judgment of resentence.

When considering resentencing based on a determination of prison overcrowding by the Department of Corrections pursuant to Section 3 of this act, the court shall use not less than a standard percentage to reduce sentence length for every offender approved for resentencing in a given class as prioritized in Section 3 of this act. The percentage shall be determined by the Oklahoma Criminal Justice Resource Center based upon statistical data of nonviolent offenses, including sentence length, incarceration cost for sentencing, population projections, actual population, fiscal impact and bed space available. The Criminal Justice Resource Center shall notify the Administrative Office of the Courts of the percentage upon receiving notice of prison overcrowding pursuant to Section 3 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 510.12 of Title 57, unless there is created a duplication in numbering, reads as follows:

Whenever the state prison population in a security level reaches ninety percent (90%) of capacity as determined by the total state-owned prison beds available for such security level, the Department

of Corrections shall immediately restore to every nonviolent offender all lost earned credits taken for disciplinary or technical infractions; provided such earned credits have been removed for at least sixty (60) days. When the restoration of earned credits does not result in reclassification of inmates that reduces the prison population to less than ninety percent (90%) of capacity in such security level, the Department shall notify the Administrative Director of the Courts, the District Attorneys Council, the Oklahoma Indigent Defense System, and the Criminal Justice Resource Center that resentencing hearings are necessary pursuant to the authority of Section 1 of this act. Offenders shall receive notice of activated capacity for resentencing in the following priority:

1. Nonviolent offenders serving a term of imprisonment with no remaining consecutive sentences;

2. Nonviolent offenders serving a term of imprisonment with consecutive sentences;

3. Nonviolent offenders serving a term of imprisonment in conjunction with a violent offense;

4. Violent offenders serving a term of imprisonment of less than ten (10) years with no remaining consecutive sentences;

5. Violent offenders serving a term of imprisonment less than twenty (20) years and no consecutive sentences; and

6. All other offenders, except those serving a sentence of life without parole or death sentence.

Any offender may contact private defense counsel on a form prepared by the Department to request a resentencing hearing when notified of activated capacity for resentencing. All indigent offender names and records will be submitted to the Oklahoma Indigent Defense System for appropriate handling by defense attorneys on contract with the System upon notice of activated capacity for resentencing. When the Department of Corrections receives a completed form from an offender for resentencing pursuant

to notice of activated capacity for resentencing, the Department shall provide the evaluation report for such offender at a cost of fifty cents ($0.50) per page. The cost shall be deducted from the inmate's trust account.

Upon notice from the court of a resentencing hearing, the Department shall provide the court with any and all documentation required pursuant to Section 1 of this act, except that defense counsel shall provide the court and prosecutor with a copy of the evaluation report. The incarcerated offender shall not be entitled to attend the hearing which shall be conducted by a jacket and document review alone.

The Department may provide the court with a listing of offenders the Department determines are eligible for resentencing based upon completion of treatment, education or other rehabilitation programs or demonstrated changes in conduct and behaviors.

SECTION 4. This act shall become effective July 1, 2003.

SECTION 5. 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.

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