

CS for SB 832

THE STATE SENATE
Tuesday, February 25, 2003

Committee Substitute for
Senate Bill No. 832

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 832 - By: SHURDEN of the Senate and ERWIN of the House.

[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

1 sentences, removing or dismissing conditions of a sentence including
2 provisions for a split sentence or suspended sentence, or modifying
3 a plea agreement including adjustments to charges, counts and
4 penalty provisions.

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

17 The Department of Corrections shall provide the court with the
18 offender's evaluation report prepared by the Lexington Assessment
19 and Reception Center at the time of reception and any other
20 information pertaining to the defendant in the Department records.
21 The Oklahoma Criminal Justice Resource Center shall provide the
22 court with current data on receptions, average length of sentence
23 imposed for similar offenses within the state, average length of

1 incarceration for similar offenses, cost of incarceration,
2 population data, and other statistical information relevant to
3 sentencing. In addition to other information provided by the
4 Department, the defense, the prosecution and the Oklahoma Criminal
5 Justice Resource Center, the Court shall consider: any victim
6 impact statements, proof of treatment and education, family impact
7 statements, recidivism data, correspondence, and other relevant
8 information.

9 The purpose of a resentencing hearing shall be to:

- 10 1. Bring sentences into compliance with any provision of law
11 repealing or reducing penalty provisions enacted since sentencing;
- 12 2. Reduce prison overcrowding by adjusting nonviolent offender
13 sentences to preserve space for violent offenders;
- 14 3. Achieve uniformity and fairness in sentences;
- 15 4. Provide access for eligible offenders to community
16 treatment, educational, and medical resources; and
- 17 5. Grant opportunity to offenders to be accountable to victims
18 through restitution and to reunite with family members following a
19 rehabilitation plan and demonstrated change in conduct and behavior.

20 When the court clerk enters a judgment of resentence, a copy
21 shall be immediately transmitted to the Department of Corrections
22 for immediate action by the Department in relation to security
23 classification, earned credits, treatment opportunity, parole

1 eligibility and, if ordered, release of the designated offender.
2 The Department shall not retain any resentenced offender contrary to
3 the order of the court in the judgment of resentence.

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

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

20 Whenever the state prison population in a security level reaches
21 ninety percent (90%) of capacity as determined by the total state-
22 owned prison beds available for such security level, the Department
23 of Corrections shall immediately restore to every nonviolent

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

- 12 1. Nonviolent offenders serving a term of imprisonment with no
13 remaining consecutive sentences;
- 14 2. Nonviolent offenders serving a term of imprisonment with
15 consecutive sentences;
- 16 3. Nonviolent offenders serving a term of imprisonment in
17 conjunction with a violent offense;
- 18 4. Violent offenders serving a term of imprisonment of less
19 than ten (10) years with no remaining consecutive sentences;
- 20 5. Violent offenders serving a term of imprisonment less than
21 twenty (20) years and no consecutive sentences; and
- 22 6. All other offenders, except those serving a sentence of life
23 without parole or death sentence.

1 Any offender may contact private defense counsel on a form
2 prepared by the Department to request a resentencing hearing when
3 notified of activated capacity for resentencing. All indigent
4 offender names and records will be submitted to the Oklahoma
5 Indigent Defense System for appropriate handling by defense
6 attorneys on contract with the System upon notice of activated
7 capacity for resentencing. When the Department of Corrections
8 receives a completed form from an offender for resentencing pursuant
9 to notice of activated capacity for resentencing, the Department
10 shall provide the evaluation report for such offender at a cost of
11 fifty cents (\$0.50) per page. The cost shall be deducted from the
12 inmate's trust account.

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

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

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

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

6 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-19-03 - DO
7 PASS, As Amended and Coauthored.