

ENROLLED SENATE
BILL NO. 613

By: Anderson and Gumm of the
Senate

and

Duncan and Roan of the
House

An Act relating to criminal procedure; amending 22 O.S. 2001, Sections 982a, as amended by Section 6, Chapter 358, O.S.L. 2007, 996.1, as last amended by Section 1, Chapter 426, O.S.L. 2005 and 1015, as last amended by Section 7, Chapter 358, O.S.L. 2007 (22 O.S. Supp. 2008, Sections 982a, 996.1 and 1015), which relate to judicial review, definitions and executions; prohibiting imposition of deferred sentence under certain circumstances; modifying definition; authorizing certain officials to witness executions; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 982a, as amended by Section 6, Chapter 358, O.S.L. 2007 (22 O.S. Supp. 2008, Section 982a), is amended to read as follows:

Section 982a. A. Any time within twelve (12) months after a sentence is imposed or within twelve (12) months after probation has been revoked, the court imposing sentence or revocation of probation may modify such sentence or revocation by directing that another ~~penalty~~ sentence be imposed, if the court is satisfied that the best interests of the public will not be jeopardized; provided, however, the court shall not impose a deferred sentence. This section shall not apply to convicted felons who have been in confinement in any

state prison system for any previous felony conviction during the ten-year period preceding the date that the sentence this section applies to was imposed. Further, without the consent of the district attorney, this section shall not apply to sentences imposed pursuant to a plea agreement.

B. The Department of Corrections shall provide the court imposing sentence or revocation of probation with the report by the Lexington Assessment and Reception Center and any other information the Department can supply on the inmate. The court shall consider such reports when modifying the sentence or revocation of probation.

C. If the court considers modification of the sentence or revocation of probation, a hearing shall be made in open court. The clerk of the court imposing sentence or revocation of probation shall give notice of the hearing and provide a copy of the report by the Lexington Assessment and Reception Center to the inmate, the inmate's legal counsel and the district attorney of the county in which the inmate was convicted not less than twenty-one (21) days prior to the hearing.

D. If an appeal is taken which results in a modification of the sentence or revocation of probation of the defendant, such sentence may be further modified in the manner hereinbefore described within twelve (12) months after the receipt by the clerk of the district court of the mandate from the Supreme Court or the Court of Criminal Appeals.

SECTION 2. AMENDATORY 22 O.S. 2001, Section 996.1, as last amended by Section 1, Chapter 426, O.S.L. 2005 (22 O.S. Supp. 2008, Section 996.1), is amended to read as follows:

Section 996.1 As used in the Delayed Sentencing Program for Young Adults:

"Offender" means any adult eighteen (18) through twenty-one (21) years of age ~~charged with~~ as of the date of a verdict of guilty or a plea of guilty or nolo contendere for a nonviolent felony offense or a juvenile who has been certified to stand trial as an adult for a nonviolent felony offense, and who has not been convicted of assault and battery with a dangerous weapon, aggravated assault and battery on a law officer, poisoning with intent to kill, shooting or

discharging a firearm with intent to kill, assault with intent to kill, using a vehicle to facilitate the intentional discharge of any kind of firearm in violation of Section 652 of Title 21 of the Oklahoma Statutes, assault with intent to commit a felony, murder in the first degree, murder in the second degree, manslaughter in the first degree, manslaughter in the second degree, kidnapping, burglary in the first degree, kidnapping for extortion, maiming, robbery, child beating, wiring any equipment, vehicle, or structure with explosives, forcible sodomy, rape in the first degree or rape by instrumentation, lewd or indecent proposition or lewd or indecent act with a child under sixteen (16) years of age, use of a firearm or offensive weapon to commit or attempt to commit a felony, pointing firearms, rioting, or arson in the first degree, and who has no charges pending for a violent offense.

SECTION 3. AMENDATORY 22 O.S. 2001, Section 1015, as last amended by Section 7, Chapter 358, O.S.L. 2007 (22 O.S. Supp. 2008, Section 1015), is amended to read as follows:

Section 1015. A. A judgment of death must be executed at the Oklahoma State Penitentiary at McAlester, Oklahoma, said prison to be designated by the court by which judgment is to be rendered.

B. The judgment of execution shall take place under the authority of the Director of the Oklahoma Department of Corrections and the warden must be present along with other necessary prison and corrections officials to carry out the execution. The warden must invite the presence of a physician and the district attorney of the county in which the crime occurred or his or her designee, the judge who presided at the trial issuing the sentence of death, the chief of police of the municipality in which the crime occurred, if applicable, and lead law enforcement officials of any state, county or local law enforcement agency who investigated the crime or testified in any court or clemency proceeding related to the crime, including but not limited to the sheriff of the county wherein the conviction was had, to witness the execution; in addition, the Cabinet Secretary of Safety and Security must be invited and other correctional personnel deemed appropriate and approved by the Director. The warden shall, at the request of the defendant, permit the presence of such ministers of the defendant's choice, not exceeding two, and any persons, relatives or friends, not to exceed five, as the defendant may name; provided, reporters from recognized

members of the news media will be admitted upon proper identification, application and approval of the warden.

C. In the event the defendant has been sentenced to death in one or more criminal proceedings in this state, or has been sentenced to death in this state and by one or more courts of competent jurisdiction in another state or pursuant to federal authority, or any combination thereof, and this state has priority to execute the defendant, the warden must invite the prosecuting attorney or his or her designee, the judge, and the chief law enforcement official from each jurisdiction where any death sentence has issued. The above mentioned officials shall be allowed to witness the execution or view the execution by closed circuit television as determined by the Director of the Department of Corrections.

D. A place shall be provided at the Oklahoma State Penitentiary at McAlester so that individuals who are eighteen (18) years of age or older and who are members of the immediate family of any deceased victim of the defendant may witness the execution. The immediate family members shall be allowed to witness the execution from an area that is separate from the area to which other nonfamily member witnesses are admitted, provided, however, if there are multiple deceased victims, the Department shall not be required to provide separate areas for each family of each deceased victim. If facilities are not capable or sufficient to provide all immediate family members with a direct view of the execution, the Department of Corrections may broadcast the execution by means of a closed circuit television system to an area in which other immediate family members may be located.

Immediate family members may request individuals not directly related to the deceased victim but who serve a close supporting role or professional role to the deceased victim or an immediate family member, including, but not limited to, a minister or licensed counselor. The warden in consultation with the Director shall approve or disapprove such requests. Provided further, the Department may set a limit on the number of witnesses or viewers within occupancy limits.

As used in this section, "members of the immediate family" means the spouse, a child by birth or adoption, a stepchild, a parent, a

grandparent, a grandchild, a sibling of a deceased victim, or the spouse of any immediate family member specified in this subsection.

E. Any surviving victim of the defendant who is eighteen (18) years of age or older may view the execution by closed circuit television with the approval of both the Director of the Department of Corrections and the warden. The Director and warden shall prioritize persons to view the execution, including immediate family members, surviving victims, and supporting persons, and may set a limit on the number of viewers within occupancy limits. Any surviving victim approved to view the execution of their perpetrator may have an accompanying support person as provided for members of the immediate family of a deceased victim. As used in this subsection, "surviving victim" means any person who suffered serious harm or injury due to the criminal acts of the defendant of which the defendant has been convicted in a court of competent jurisdiction.

SECTION 4. This act shall become effective November 1, 2009.

Passed the Senate the 15th day of May, 2009.

Presiding Officer of the Senate

Passed the House of Representatives the 18th day of May, 2009.

Presiding Officer of the House
of Representatives