

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 2328

By: Johnson (Constance)

4
5
6 AS INTRODUCED

7 An Act relating to crimes and punishments; amending
8 21 O.S. 2001, Section 51.1, as last amended by
9 Section 1, Chapter 455, O.S.L. 2002 (21 O.S. Supp.
10 2009, Section 51.1), which relates to second and
11 subsequent offenses; modifying definition of felony
12 offense for enhanced punishment; prohibiting
13 enhancement for certain offenses; and providing an
14 effective date.

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

16 SECTION 1. AMENDATORY 21 O.S. 2001, Section 51.1, as
17 last amended by Section 1, Chapter 455, O.S.L. 2002 (21 O.S. Supp.
18 2009, Section 51.1), is amended to read as follows:

19 Section 51.1. A. ~~Except as otherwise provided in the Elderly
20 and Incapacitated Victim's Protection Program and Section 3 of this
21 act, every person who, having been convicted of any offense
22 punishable by imprisonment in the State Penitentiary, commits any
23 crime after such conviction, within ten (10) years of the date
24 following the completion of the execution of the sentence, and
against whom the District Attorney seeks to enhance punishment
pursuant to this section of law, is punishable therefor as follows:~~

1 ~~1. If the offense for which the person is subsequently~~
2 ~~convicted is an offense enumerated in Section 571 of Title 57 of the~~
3 ~~Oklahoma Statutes and the offense is punishable by imprisonment in~~
4 ~~the State Penitentiary for a term exceeding five (5) years, such~~
5 ~~person is punishable by imprisonment in the State Penitentiary for a~~
6 ~~term in the range of ten (10) years to life imprisonment.~~

7 ~~2. If the offense of which such person is subsequently~~
8 ~~convicted is such that upon a first conviction an offender would be~~
9 ~~punishable by imprisonment in the State Penitentiary for any term~~
10 ~~exceeding five (5) years, such person is punishable by imprisonment~~
11 ~~in the State Penitentiary for a term in the range of twice the~~
12 ~~minimum term for a first time offender to life imprisonment. If the~~
13 ~~subsequent felony offense does not carry a minimum sentence as a~~
14 ~~first time offender, such person is punishable by imprisonment in~~
15 ~~the State Penitentiary for a term in the range of two (2) years to~~
16 ~~life imprisonment.~~

17 ~~3. If such subsequent offense is such that upon a first~~
18 ~~conviction the offender would be punishable by imprisonment in the~~
19 ~~State Penitentiary for five (5) years, or any less term, then the~~
20 ~~person convicted of such subsequent offense is punishable by~~
21 ~~imprisonment in the State Penitentiary for a term not exceeding ten~~
22 ~~(10) years.~~

23 ~~4. If such subsequent conviction is for petit larceny, the~~
24 ~~person convicted of such subsequent offense is punishable by~~

1 ~~imprisonment in the State Penitentiary for a term not exceeding five~~
2 ~~(5) years.~~

3 ~~B.~~ 1. Every person who, having been twice convicted of a
4 violent felony offenses offense, as enumerated in Section 571 of
5 Title 57 of the Oklahoma Statutes, commits a subsequent violent
6 felony offense ~~which is an offense enumerated in Section 571 of~~
7 ~~Title 57 of the Oklahoma Statutes,~~ within ten (10) years of the date
8 following the completion of the execution of the sentence, ~~and~~
9 ~~against whom the District Attorney seeks to enhance punishment~~
10 ~~pursuant to this section of law,~~ is punishable by imprisonment in
11 the State Penitentiary for a term in the range of twenty (20) years
12 to life imprisonment.

13 2. If an existing enhancement provision exists in the statutes
14 for the felony offense committed, the provisions of this subsection
15 shall not apply and shall not be used for enhancement.

16 3. Felony offenses relied upon for enhancement pursuant to the
17 provisions of this section shall not have arisen out of the same
18 transaction or occurrence or series of events closely related in
19 time and location be separate and distinct offenses. Nothing in
20 this section shall abrogate or affect the punishment by death in all
21 crimes now or hereafter made punishable by death.

22 ~~C.~~ ~~Every person who, having been twice convicted of felony~~
23 ~~offenses, commits a subsequent felony offense within ten (10) years~~
24 ~~of the date following the completion of the execution of the~~

1 ~~sentence, and against whom the District Attorney seeks to enhance~~
2 ~~punishment pursuant to this section of law, is punishable by~~
3 ~~imprisonment in the State Penitentiary for a term in the range of~~
4 ~~three times the minimum term for a first time offender to life~~
5 ~~imprisonment. If the subsequent felony offense does not carry a~~
6 ~~minimum sentence as a first time offender, the person is punishable~~
7 ~~by imprisonment in the State Penitentiary for a term in the range of~~
8 ~~four (4) years to life imprisonment. Felony offenses relied upon~~
9 ~~shall not have arisen out of the same transaction or occurrence or~~
10 ~~series of events closely related in time and location. Nothing in~~
11 ~~this section shall abrogate or affect the punishment by death in all~~
12 ~~crimes now or hereafter made punishable by death.~~

13 B. Any person who has an enhanced sentence pursuant to this
14 section and that sentence exceeds the statutory maximum for the
15 offense committed and expressed in the governing statute then that
16 person shall have the sentence reduced to the statutory maximum
17 provided by statute.

18 C. Neither the state, nor any of its agencies or political
19 subdivisions, shall be liable for any damages or claims whether
20 alleged pursuant to the Eighth Amendment of the United States
21 Constitution or habeas corpus or any other claim under federal or
22 state law when the applicability of this act results in an
23 individual being incarcerated for a period of time that exceeds the
24 statutorily permitted period of incarceration authorized to be

1 served pursuant to this act. The penalty modifications contained in
2 this act shall not be construed as the state's recognition of any
3 constitutional infirmity that may or may not exist.

4 SECTION 2. This act shall become effective November 1, 2010.

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