

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 848

By: Lerblance

4  
5  
6 AS INTRODUCED

7 An Act relating to crimes and punishments; creating  
8 the Oklahoma Sentencing Guidelines Act; providing  
9 short title; stating certain guidelines be followed  
10 by certain date; specifying sentencing guidelines for  
11 nondrug crimes; providing discretion for courts to  
12 sentence within certain range for certain crimes;  
13 requiring certain declaration by a court; allowing  
14 certain sentencing options by a court; providing  
15 sentencing guidelines for certain drug related  
16 crimes; allowing certain discretion by a court;  
17 providing sentencing guidelines for second and  
18 subsequent offenses; allowing for certain time served  
19 reduction; providing for codification; providing for  
20 noncodification; and providing an effective date.

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

22 SECTION 1. NEW LAW A new section of law not to be  
23 codified in the Oklahoma Statutes reads as follows:

24 This act shall be known and may be cited as the "Oklahoma  
Sentencing Guidelines Act".

SECTION 2. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 161 of Title 21, unless there is  
created a duplication in numbering, reads as follows:

1       Notwithstanding any other provision of law and for convictions  
2 occurring on or after the effective date of this act, sentencing  
3 guidelines and prosecuting standards pursuant to the Oklahoma  
4 Sentencing Guidelines Act shall be followed.

5       SECTION 3.       NEW LAW       A new section of law to be codified  
6 in the Oklahoma Statutes as Section 162 of Title 21, unless there is  
7 created a duplication in numbering, reads as follows:

8       A. For purposes of sentencing, the following sentencing  
9 guidelines grid for nondrug crimes shall be applied in felony cases  
10 for crimes committed on or after July 1, 1993.

11       B. The provisions of this section shall be applicable to the  
12 sentencing guidelines grid for nondrug crimes. Sentences expressed  
13 in such grid represent months of imprisonment.

14       C. The sentencing guidelines grid is a two-dimensional crime  
15 severity and criminal history classification tool. The grid's  
16 vertical axis is the crime severity scale which classifies current  
17 crimes of conviction. The grid's horizontal axis is the criminal  
18 history scale which classifies criminal histories.

19       D. The sentencing guidelines grid for nondrug crimes as  
20 provided in this section defines presumptive punishments for felony  
21 convictions, subject to judicial discretion to deviate for  
22 substantial and compelling reasons and impose a different sentence  
23 in recognition of aggravating and mitigating factors as provided in  
24 the Oklahoma Sentencing Guidelines Act. The appropriate punishment

1 for a felony conviction should depend on the severity of the crime  
2 of conviction when compared to all other crimes and the offender's  
3 criminal history.

4 E. 1. The sentencing court has discretion to sentence at any  
5 place within the sentencing range. The sentencing judge shall  
6 select the center of the range in the usual case and reserve the  
7 upper and lower limits for aggravating and mitigating factors  
8 insufficient to warrant a departure.

9 2. In presumptive imprisonment cases, the sentencing court  
10 shall pronounce the complete sentence which shall include the prison  
11 sentence, the maximum potential reduction to such sentence as a  
12 result of good time and the period of post-release supervision at  
13 the sentencing hearing. Failure to pronounce the period of post-  
14 release supervision shall not negate the existence of such period of  
15 post-release supervision.

16 3. In presumptive nonprison cases, the sentencing court shall  
17 pronounce the prison sentence as well as the duration of the  
18 nonprison sanction at the sentencing hearing.

19 F. Each grid block states the presumptive sentencing range for  
20 an offender whose crime of conviction and criminal history place  
21 such offender in that grid block. If an offense is classified in a  
22 grid block below the dispositional line, the presumptive disposition  
23 shall be nonimprisonment. If an offense is classified in a grid  
24 block above the dispositional line, the presumptive disposition

1 shall be imprisonment. If an offense is classified in grid blocks  
2 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence  
3 upon making the following findings on the record:

4 1. An appropriate treatment program exists which is likely to  
5 be more effective than the presumptive prison term in reducing the  
6 risk of offender recidivism; and

7 2. The recommended treatment program is available and the  
8 offender can be admitted to such program within a reasonable period  
9 of time; or

10 3. The nonprison sanction will serve community safety interests  
11 by promoting offender reformation.

12 Any decision made by the court regarding the imposition of an  
13 optional nonprison sentence if the offense is classified in grid  
14 blocks 5-H, 5-I or 6-G shall not be considered a departure and shall  
15 not be subject to appeal.

16 G. The sentence for the violation of aggravated assault against  
17 a law enforcement officer or aggravated battery against a law  
18 enforcement officer which places the defendant's sentence in grid  
19 block 6-H or 6-I shall be presumed imprisonment. The court may  
20 impose an optional nonprison sentence upon making a finding on the  
21 record that the nonprison sanction will serve community safety  
22 interests by promoting offender reformation. Any decision made by  
23 the court regarding the imposition of the optional nonprison  
24 sentence, if the offense is classified in grid block 6-H or 6-I,

1 shall not be considered departure and shall not be subject to  
2 appeal.

3 H. When a firearm is used to commit any felony, the offender's  
4 sentence shall be presumed imprisonment. The court may impose an  
5 optional nonprison sentence upon making a finding on the record that  
6 the nonprison sanction will serve community safety interests by  
7 promoting offender reformation. Any decision made by the court  
8 regarding the imposition of the optional nonprison sentence shall  
9 not be considered a departure and shall not be subject to appeal.

10 I. The sentence for any sex offender whose current convicted  
11 crime carries a presumptive term of imprisonment shall be double the  
12 maximum duration of the presumptive imprisonment term. The sentence  
13 for any sex offender whose current conviction carries a presumptive  
14 nonprison term shall be presumed imprisonment and shall be double  
15 the maximum duration of the presumptive imprisonment term.

16 J. If it is shown at sentencing that the offender committed any  
17 felony violation for the benefit of, at the direction of, or in  
18 association with any criminal street gang, with the specific intent  
19 to promote, further or assist in any criminal conduct by gang  
20 members, the offender's sentence shall be presumed imprisonment.  
21 Any decision made by the court regarding the imposition of the  
22 optional nonprison sentence shall not be considered a departure and  
23 shall not be subject to appeal. As used in this subsection,  
24 "criminal street gang" means any organization, association or group

1 of three or more persons, whether formal or informal, having as one  
2 of its primary activities the commission of one or more person  
3 felonies or felony violations of the Uniform Controlled Dangerous  
4 Substances Act, which has a common name or common identifying sign  
5 or symbol, whose members, individually or collectively engage in or  
6 have engaged in the commission, attempted commission, conspiracy to  
7 commit or solicitation of two or more person felonies or felony  
8 violations of the Uniform Controlled Dangerous Substances Act, or  
9 any substantially similar offense from another jurisdiction.

10 SECTION 4. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 163 of Title 21, unless there is  
12 created a duplication in numbering, reads as follows:

13 A. For the purpose of sentencing, the following sentencing  
14 guidelines grid for drug crimes shall be applied in felony cases  
15 under the Uniform Controlled Dangerous Substances Act for crimes  
16 committed on or after July 1, 1993.

17 B. The provisions of subsection A of this section will apply  
18 for the purpose of sentencing violations of the Uniform Controlled  
19 Dangerous Substances Act except as otherwise provided by law.  
20 Sentences expressed in the sentencing guidelines grid for drug  
21 crimes in subsection A of this section represent months of  
22 imprisonment.

23 C. 1. The sentencing court has discretion to sentence at any  
24 place within the sentencing range. The sentencing judge shall

1 select the center of the range in the usual case and reserve the  
2 upper and lower limits for aggravating and mitigating factors  
3 insufficient to warrant a departure. The sentencing court shall not  
4 distinguish between the controlled substances cocaine base  
5 (9041L000) and cocaine hydrochloride (9041L005) when sentencing  
6 within the sentencing range of the grid block.

7 2. In presumptive imprisonment cases, the sentencing court  
8 shall pronounce the complete sentence which shall include the prison  
9 sentence, the maximum potential reduction to such sentence as a  
10 result of good time and the period of post-release supervision at  
11 the sentencing hearing. Failure to pronounce the period of post-  
12 release supervision shall not negate the existence of such period of  
13 post-release supervision.

14 3. In presumptive nonprison cases, the sentencing court shall  
15 pronounce the prison sentence as well as the duration of the  
16 nonprison sanction at the sentencing hearing.

17 D. Each grid block states the presumptive sentencing range for  
18 an offender whose crime of conviction and criminal history place  
19 such offender in that grid block. If an offense is classified in a  
20 grid block below the dispositional line, the presumptive disposition  
21 shall be nonimprisonment. If an offense is classified in a grid  
22 block above the dispositional line, the presumptive disposition  
23 shall be imprisonment. If an offense is classified in grid blocks  
24

1 3-E, 3-F, 3-G, 3-H or 3-I, the court may impose an optional  
2 nonprison sentence upon making the following findings on the record:

3 1. An appropriate treatment program exists which is likely to  
4 be more effective than the presumptive prison term in reducing the  
5 risk of offender recidivism; and

6 2. The recommended treatment program is available and the  
7 offender can be admitted to such program within a reasonable period  
8 of time; or

9 3. The nonprison sanction will serve community safety interests  
10 by promoting offender reformation.

11 Any decision made by the court regarding the imposition of an  
12 optional nonprison sentence if the offense is classified in grid  
13 blocks 3-E, 3-F, 3-G, 3-H or 3-I shall not be considered a departure  
14 and shall not be subject to appeal.

15 E. The sentence for a second or subsequent conviction for the  
16 manufacture of any controlled substance or controlled substance  
17 analog shall be a presumptive term of imprisonment of two times the  
18 maximum duration of the presumptive term of imprisonment. The court  
19 may impose an optional reduction in such sentence of not to exceed  
20 fifty percent (50%) of the mandatory increase provided by this  
21 subsection upon making a finding on the record that one or more of  
22 the mitigating factors to justify such a reduction in sentence. Any  
23 decision made by the court regarding the reduction in such sentence

1 shall not be considered a departure and shall not be subject to  
2 appeal.

3 F. The sentence for a third or subsequent felony conviction  
4 shall be a presumptive term of imprisonment and the defendant shall  
5 be sentenced to prison as provided by this section, if the defendant  
6 has previously completed a certified drug abuse treatment program or  
7 has been discharged or refused to participate in a certified drug  
8 abuse treatment program. Such sentence shall not be considered a  
9 departure and shall not be subject to appeal.

10 SECTION 5. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 164 of Title 21, unless there is  
12 created a duplication in numbering, reads as follows:

13 A. For crimes committed on or after July 1, 1993, the sentences  
14 of imprisonment shall represent the time a person shall actually  
15 serve, subject to a reduction of up to fifteen percent (15%) of the  
16 primary sentence for good time as authorized by law.

17 B. The sentencing court shall pronounce sentences in all felony  
18 cases.

19 SECTION 6. This act shall become effective November 1, 2011.

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