

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 1097

By: Treat

AS INTRODUCED

An Act relating to crime and punishment; amending 21 O.S. 2011, Section 51.1, which relates to second or subsequent offenses; clarifying language; removing certain subsequent convictions; stating certain prohibition; modifying certain maximum sentences; disallowing certain offenses from consideration; amending 21 O.S. 2011, Section 51.2, which relates to second and subsequent offenses; modifying offenses; updating language; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 51.1, is amended to read as follows:

Section 51.1. A. Except as otherwise provided in the Elderly and Incapacitated Victim's Protection Program and Section ~~3 of this act~~ 51.1a of this title, every person who, having been convicted of any ~~offense punishable by imprisonment in the State Penitentiary~~ felony, commits any crime after such conviction, within ten (10) years of the date following the completion of the execution of the sentence, and against whom the ~~District Attorney~~ district attorney

1 seeks to enhance punishment pursuant to this section of law, is
2 punishable therefor as follows:

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

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

23 3. If such subsequent offense is such that upon a first
24 conviction the offender would be punishable by imprisonment in the

1 ~~State Penitentiary~~ custody of the Department of Corrections for five
2 (5) years, or any less term, then the person convicted of such
3 subsequent offense is punishable by imprisonment in the ~~State~~
4 ~~Penitentiary~~ custody of the Department of Corrections for a term not
5 exceeding ten (10) years.

6 4. ~~If such subsequent conviction is for petit larceny, the~~
7 ~~person convicted of such subsequent offense is punishable by~~
8 ~~imprisonment in the State Penitentiary for a term not exceeding five~~
9 ~~(5) years.~~

10 B. Every person who, having been twice convicted of felony
11 offenses, commits a subsequent felony offense which is an offense
12 enumerated in Section 571 of Title 57 of the Oklahoma Statutes,
13 within ten (10) years of the date following the completion of the
14 execution of the sentence, and against whom the ~~District Attorney~~
15 district attorney seeks to enhance punishment pursuant to this
16 section of law, is punishable by imprisonment in the ~~State~~
17 ~~Penitentiary~~ custody of the Department of Corrections for a term in
18 the range of twenty (20) years to life imprisonment. Felony
19 offenses relied upon shall not have arisen out of the same
20 transaction or occurrence or series of events closely related in
21 time and location. Nothing in this section shall abrogate or affect
22 the punishment by death in all crimes now or hereafter made
23 punishable by death.

1 C. Every person who, having been twice convicted of felony
2 offenses, commits a subsequent felony offense within ten (10) years
3 of the date following the completion of the execution of the
4 sentence, and against whom the ~~District Attorney~~ district attorney
5 seeks to enhance punishment pursuant to this section of law, is
6 punishable by imprisonment in the ~~State Penitentiary~~ custody of the
7 Department of Corrections for a term in the range of three times the
8 minimum term for a first time offender to life imprisonment. If the
9 subsequent felony offense does not carry a minimum sentence as a
10 first time offender, the person is punishable by imprisonment in the
11 ~~State Penitentiary~~ custody of the Department of Corrections for a
12 term in the range of four (4) years to life imprisonment. Felony
13 offenses relied upon shall not have arisen out of the same
14 transaction or occurrence or series of events closely related in
15 time and location. Nothing in this section shall abrogate or affect
16 the punishment by death in all crimes now or hereafter made
17 punishable by death.

18 D. A previous conviction for possession of a controlled
19 dangerous substance pursuant to Section 2-402 of Title 63 of the
20 Oklahoma Statutes, or the equivalent law for possession of a
21 controlled dangerous substance from any other jurisdiction, shall
22 not be used to enhance punishment pursuant to this section of law.

23 E. Notwithstanding subsections A, B and C of this section,
24 every person who, having previously been convicted of a felony other

1 than a felony enumerated in Section 571 of Title 57 of the Oklahoma
2 Statutes, any sex offense that would require the person to register
3 as a sex offender pursuant to the Sex Offenders Registration Act, or
4 any of the felony offenses enumerated in subsection F of this
5 section, is convicted of a second or subsequent felony other than a
6 felony enumerated in Section 571 of Title 57 of the Oklahoma
7 Statutes, any sex offense that would require the person to register
8 as a sex offender pursuant to the Sex Offenders Registration Act, or
9 any of the felony offenses enumerated in subsection F of this
10 section, is punishable by imprisonment in the custody of the
11 Department of Corrections for a term of not more than the maximum
12 sentence plus one-fourth (1/4) of the sentence that could have been
13 imposed for a first conviction of the current offense.

14 F. In addition to felony offenses enumerated in Section 571 of
15 Title 57 of the Oklahoma Statutes, the following felony offenses
16 shall not be subject to the provisions of subsection E of this
17 section:

18 1. Mutilation, Treating with Indignity or Destroying Flag, as
19 provided for in Section 373 of this title;

20 2. Removal of Electronic Monitoring Device, as provided for in
21 subsection D of Section 444 of this title;

22 3. Endangering Others while Eluding Peace Officer or Causing an
23 Accident Resulting in Great Bodily Injury to Another while Eluding
24

1 Peace Officer, as provided for in subsections B or C of Section 540A
2 of this title;

3 4. Offenses involving Domestic Abuse, as provided for in
4 Section 644.1 and subsections C, D, E, F, G and J of Section 644 of
5 this title;

6 5. Aggravated Assault and Battery, as provided for in Section
7 646 of this title;

8 6. Partial-Birth Abortion, as provided for in Section 684 of
9 this title;

10 7. Malicious Harassment Based on Race, Color, Religion,
11 Ancestry, National Origin or Disability as provided for in Section
12 850 of this title;

13 8. Abandoning Child under Age Ten, as provided for in Section
14 851 of this title;

15 9. Child Endangerment by Permitting Child Abuse, as provided
16 for in Section 852.1 of this title;

17 10. Trafficking in Children, as provided for in Section 866 of
18 this title;

19 11. Incest, as provided for in Section 885 of this title;

20 12. Indecent Exposure, as provided for in Section 1021 of this
21 title;

22 13. Soliciting Sexual Conduct or Communication with Minor by
23 use of Technology, as provided for in Section 1040.13a of this
24 title;

1 14. Desecration of a Human Corpse, as provided for in Section
2 1161.1 of this title;

3 15. Stalking as provided for in Section 1173 of this title;

4 16. Possession of Firearm by Convicted Felons and Delinquents,
5 as provided for in Section 1283 of this title;

6 17. Possession of Sawed-Off Shotgun or Sawed-Off Rifle, as
7 provided for in Section 1289.18 of this title;

8 18. Planning or Threatening Violent Act, as provided for in
9 Section 1378 of this title;

10 19. Endangering Life of Emergency Service Personnel by Arson,
11 as provided for in Section 1405 of this title;

12 20. Acts of Cruelty to Animals, as provided for in Section 1685
13 of this title;

14 21. Sex Offender Engaging in Ice Cream Truck Vending, as
15 provided for in Section 2100.1 of this title; and

16 22. Violation of Protective Order, as provided for in Section
17 60.6 of Title 22 of the Oklahoma Statutes.

18 SECTION 2. AMENDATORY 21 O.S. 2011, Section 51.2, is
19 amended to read as follows:

20 Section 51.2. Except as provided in Section ~~3 of this act~~ 51.1a
21 of this title, no person shall be sentenced as a second and
22 subsequent offender under Section 51.1 of this title, or any other
23 section of the Oklahoma Statutes, when a period of ten (10) years
24 has elapsed since the completion of the sentence imposed on the

1 former conviction; provided, ~~said~~ the person has not, in the
2 meantime, been convicted of a ~~misdemeanor involving moral turpitude~~
3 ~~or a~~ felony. Nothing in this section shall prohibit the use of a
4 prior conviction for physical or sexually related child abuse as a
5 prior conviction for second and subsequent offender purposes if the
6 person is presently charged with a felony crime involving physical
7 or sexually related child abuse.

8 SECTION 3. This act shall become effective November 1, 2018.

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