

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

HOUSE BILL 2320

By: Frix

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 2011, Section 926.1, which relates to punishments assessed and declared by juries; establishing sentencing procedures for juries that assess and declare punishment in criminal cases; providing for consideration of aggravating and mitigating circumstances unless waived by the state and defendant; directing court to follow specific sentencing procedure under certain circumstances; directing court to instruct juries on laws relating to punishment and sentencing alternatives; defining terms; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 926.1, is amended to read as follows:

Section 926.1 A. In all cases of a verdict of conviction for any offense against any of the laws of the State of Oklahoma, the jury may~~r~~ and shall~~,~~ upon the request of the defendant~~,~~ assess and declare the punishment in their verdict within the limitations fixed by law, and the court shall render a judgment according to such verdict, except as ~~hereinafter~~ provided.

1 B. In all cases in which a jury may assess and declare
2 punishment:

3 1. At the conclusion of the evidence, the judge shall instruct
4 the jury on the offense charged and any lesser included offense or
5 offenses. The jury shall be further instructed to determine only
6 the guilt or innocence of the defendant on the offense charged or
7 any lesser included offense or offenses and that punishment shall
8 not be determined by the jury at that time; and

9 2. If the jury reaches a verdict that the defendant is guilty
10 of the offense charged or guilty of a lesser included offense or
11 offenses, the court shall proceed to a second stage in which the
12 jury shall assess punishment within the limitations fixed by law
13 including sentencing alternatives available to the court pursuant to
14 the provisions of Section 991a, 991a-3 or 991c of this title as
15 applicable to the case. If the defendant has been convicted of two
16 or more offenses, the jury shall state whether the punishment upon
17 any one offense shall commence at the expiration of the punishment
18 upon any other of the offenses or if a punishment shall be served
19 concurrently with any other sentence.

20 C. If the defendant is not prosecuted for a second or
21 subsequent offense, evidence of aggravating and mitigating
22 circumstances and argument on punishment shall be received by the
23 jury unless waived by the state and the defendant. The court shall
24 instruct the jury on the penalty fixed by law for the offense or

1 offenses and the jury may assess and declare in its punishment
2 within the penalty fixed by law including sentencing alternatives
3 available to the court, pursuant to the provisions of Section 991a,
4 991a-3 or 991c of this title as applicable to the case. The jury
5 may assess and declare in its punishment any such sentencing
6 alternatives available to the court.

7 D. If the defendant is prosecuted for a second or subsequent
8 offense or offenses, except in those cases in which the former
9 conviction is an element of the offense, the court shall follow the
10 procedure set forth in Section 860.1 of this title. In addition to
11 the evidence of prior convictions, evidence of aggravating and
12 mitigating circumstances and argument on punishment shall be
13 received by the jury unless waived by the state and the defendant.
14 The court shall instruct the jury on the penalty fixed by law for
15 the offense or offenses and the jury may assess and declare its
16 punishment within the penalty fixed by law including sentencing
17 alternatives available to the court pursuant to the provisions of
18 Section 991a, 991a-3 or 991c of this title as applicable to the
19 case. The jury may assess and declare in its punishment any such
20 sentencing alternatives available to the court.

21 E. For purposes of this section:

22 1. "Aggravating circumstances" means evidence of the conduct of
23 the defendant relating to the circumstances of the offense itself

1 that would support a more severe sentence within the range of
2 punishment fixed by law; and

3 2. "Mitigating circumstances" means evidence of factors that
4 would support leniency in sentencing including, but not limited to:

- 5 a. lack of a prior criminal record,
- 6 b. minor participation in the offense,
- 7 c. culpability of the victim,
- 8 d. past circumstances, such as abuse that resulted in the
9 criminal activity,
- 10 e. circumstances at the time of the offense, such as
11 provocation, stress or emotional problems that, while
12 not excusing the crime, may offer an explanation,
- 13 f. mental or physical illness, and
- 14 g. genuine remorse.

15 SECTION 2. This act shall become effective November 1, 2021.

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