

ENROLLED SENATE
BILL NO. 932

BY: DOUGLASS of the SENATE

and

WORTHEN, POPE and COLEMAN
of the HOUSE

AN ACT RELATING TO CORRECTIONAL FACILITIES;
AMENDING 22 O.S. 1991, SECTION 991a-4 AND 57 O.S.
1991, SECTIONS 504.7, 227, 228 AND 563.2, WHICH
RELATE TO THE COMMUNITY SERVICE SENTENCING
PROGRAM, KATE BARNARD COMMUNITY CORRECTIONS
CENTER, EXEMPTION FOR INMATE WORKERS UNDER
WORKERS' COMPENSATION ACT, TORT IMMUNITY AND
PRIVATE PRISON FACILITIES; AUTHORIZING NONPROFIT
ORGANIZATIONS TO PARTICIPATE IN COMMUNITY SERVICE
SENTENCING PROGRAM; DESIGNATING KATE BARNARD
COMMUNITY CORRECTIONS CENTER TO HOUSE ONLY FEMALE
INMATES; MAKING ALL STATE AND LOCAL GOVERNMENT
AGENCIES, COMMUNITY SERVICE AGENCIES, NONPROFIT
ORGANIZATIONS, EDUCATIONAL PROGRAMS AND TREATMENT
PROGRAMS IMMUNE FROM LIABILITY UNDER THE WORKERS'
COMPENSATION ACT AND IMMUNE FROM LIABILITY FOR
TORTS COMMITTED BY OR AGAINST AN INMATE IN ANY
WORK PROGRAM; DELETING LANGUAGE; MODIFYING
LANGUAGE; AUTHORIZING PRIVATE PRISON CONTRACTOR
TO TRANSFER OR RELEASE CERTAIN INMATES TO CERTAIN
PRISON OR JURISDICTION; EXEMPTING FEDERAL INMATES
FROM THIS STATE; REPEALING 57 O.S. 1991, SECTIONS
504.4 AND 504.6, WHICH RELATE TO COMMUNITY
TREATMENT FACILITIES; PROVIDING AN EFFECTIVE
DATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 991a-4, is amended to read as follows:

Section 991a-4. A. There is hereby created the "Community Service Sentencing Program". The purpose of the program shall be to provide an alternative to incarceration for nonviolent felony offenders who would normally be sentenced to incarceration in a state institution.

B. Any eligible offender may be sentenced, at the discretion of the judge, to a Community Service Sentencing Program pursuant to the provisions of this section. For purposes of this section, "eligible offender" shall mean any person who:

1. Is not participating in the Delayed Sentencing Program for Young Adults pursuant to the provisions of Section 996 through 996.3 of this title;
2. Has not previously been convicted of two or more felonies;
3. Has been convicted of a nonviolent felony offense which shall be defined as any felony offense except assault and battery with a dangerous weapon, aggravated assault and battery on a law

officer, poisoning with intent to kill, shooting with intent to kill, assault with intent to kill, 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;

4. Has properly completed and executed all necessary documents; and

5. Is not otherwise ineligible by law or court rule.

C. The Probation and Parole Division of the Department of Corrections shall administer the Program, except in counties with a population of five hundred fifty thousand (550,000) or more persons that operate an existing program. The Division shall conduct a presentence investigation pursuant to the provisions of Section 982 of this title if the court determines the offender is to be assigned to the Program. As part of such presentence investigation, the Division shall interview the offender and advise him of the requirements and conditions of the Program. The Division shall recommend an assignment of the offender to any one or combination of the following areas:

1. Community service, with or without compensation;

2. Education, vocational-technical education or literacy programs;

3. Substance abuse treatment programs;

4. Periodic testing for the presence of controlled substances;

5. Psychological counseling or psychiatric treatment;

6. Medical treatment;

7. Restitution, to be paid either to the victim of the offense or to the Crime Victims Compensation Revolving Fund created pursuant to the provisions of Section 142.17 of Title 21 of the Oklahoma Statutes;

8. Confinement in a county jail for a period not to exceed one (1) year, night or weekend incarceration pursuant to the provisions of Section 991a-2 of this title or incarceration by the Department of Corrections; provided, the Department of Corrections shall reimburse a county which does not receive payments from any other source for the cost of the necessary expenses of such persons during periods of such incarceration in an amount not to exceed Twenty Dollars (\$20.00) per day and any county receiving such payments in an amount not to exceed Ten Dollars (\$10.00) per day. The Department shall reimburse the county for the actual cost paid for any emergency medical care for physical injury or illness of such persons if the county is required by law to provide such care for inmates in the jail. The reimbursements provided by this section shall not exceed the cost that would have accrued to the state for the feeding, care or medical care of the persons had they been incarcerated with the Department. Except as otherwise provided by law, all provisions of the Oklahoma Corrections Act of 1967, Section 501 et seq. of Title 57 of the Oklahoma Statutes, shall apply to such persons, including but not limited to any provisions requiring payment by such persons of the costs of incarceration; or

9. Probation or conditional probation.

D. The judge shall consider the criminal history of the offender, the nature of the offender's criminal conduct, the employment and family history of the offender and any other factors

he deems relevant when sentencing persons to the Program. Following the presentence investigations and recommendation, the judge shall impose sentence. The judge may accept the recommendation, with or without modifications thereto, or may reject the recommendation and impose any sentence allowed by law.

E. The provisions of Sections 20, 58.3, 138, 138.1 and 224 of Title 57 of the Oklahoma Statutes and Section 615 of Title 69 of the Oklahoma Statutes and any other provisions of law relating to earned credits for certain acts or service shall not apply to persons participating in the Program. The judge may establish a schedule of earned credits as part of the sentence.

F. The Division shall establish a list of federal, state and local government agencies, community service agencies, nonprofit organizations, educational programs and other treatment programs willing to participate in the program to which offenders may be referred. The Division shall periodically contact agencies, organizations and programs to which offenders are assigned to determine if offenders have reported and performed satisfactorily. Any such agency or program shall immediately notify the Division if an offender fails to fulfill any requirement of the Program. The Division or the sentencing judge may require additional documentation of the offender's work performance.

G. The Division shall ensure that the sentencing judge and prosecuting attorney are notified in writing when an offender has successfully completed the assigned community service hours or other requirements of the Program or has failed to complete the requirements and provide any other relevant information required by the sentencing judge or prosecuting attorney.

H. ~~The State of Oklahoma, all counties and municipalities of this state and all nonprofit or educational organizations or institutions~~ All state and local government agencies, community service agencies, nonprofit organizations, educational programs and other treatment programs participating in the Program are hereby immune from liability for any offender participating in the Program under the Workers' Compensation Act, Section 1 et seq. of Title 85 of the Oklahoma Statutes, and for torts committed by or against any offender participating in the Program to the extent specified in Sections 227 and 228 of Title 57 of the Oklahoma Statutes.

I. Any offender participating in the Program shall be advised of the provisions of this section and shall, in writing, acknowledge that he has been advised of and understands the provisions of the Program.

SECTION 2. AMENDATORY 57 O.S. 1991, Section 504.7, is amended to read as follows:

Section 504.7 ~~The two community treatment centers for men authorized by Chapter 244, O.S.L. 1976~~ Kate Barnard Community Corrections Center will house only ~~male~~ female inmates ~~referred directly from the receiving unit, unless referred to another institution for the purposes of vocational training only.~~ No inmate who has a prior institutional registration number or who is deemed dangerous or violent by the Department Classification Committee shall be placed in such center.

SECTION 3. AMENDATORY 57 O.S. 1991, Section 227, is amended to read as follows:

Section 227. A. All provisions of this section and Section 228 of this title, except as otherwise noted herein, shall apply to ~~persons~~ eligible offenders who are:

1. Assigned to a work program for any government entity of this state pursuant to a municipal court order;

2. Assigned to a community service program pursuant to a deferred prosecution agreement pursuant to the provisions of Section 305.2 of Title 22 of the Oklahoma Statutes;

3. Assigned to a public works project pursuant to the provisions of Sections 58, 58.1 or 58.2 of this title;

4. Assigned to community service pursuant to a sentence ordered pursuant to the provisions of subparagraph c of paragraph 1 of subsection A of Section 991a, Section 991c or Section 995.3 of Title 22 of the Oklahoma Statutes;

5. Assigned to a public works project pursuant to the provisions of Section 215 et seq. of this title;

6. Assigned to community service as a condition of parole pursuant to the provisions of Section 10 of Article VI of the Constitution of the State of Oklahoma;

7. Assigned to an eleemosynary institution pursuant to the provisions of Section 212 et seq. of this title;

8. Assigned to any work release or private prison industry programs pursuant to the provisions of this title; ~~or~~

9. Assigned to the Community Service Sentencing Program pursuant to the provisions of Section ~~4~~ 991a-4 of ~~this act~~ Title 22 of the Oklahoma Statutes, or

10. Assigned to a work program of a nonprofit organization with or without compensation.

B. Any ~~person~~ eligible offender described in subsection A of this section shall be exempt from the provisions of the Workers' Compensation Act, Section 1 et seq. of Title 85 of the Oklahoma Statutes. Provided, such exemption shall not apply to employment of such person ~~in the~~ by a private sector ~~for-profit employer~~. Provided further, such exemption shall not apply to those inmates employed in private prison industries involving a for-profit employer which deal in interstate commerce or which sell products or services to the federal government.

C. ~~Neither the State of Oklahoma nor any county or municipality of this state nor any nonprofit agency shall be liable for any injury to~~ All state and local government agencies, nonprofit organizations, community service agencies, educational programs and other treatment programs are hereby immune from liability for torts committed by or against any person eligible offender described in subsection A of this section; provided, those entities having court-mandated jurisdiction over the persons described in paragraphs 3, 5, 7 and 8 of subsection A of this section shall provide basic or necessary medical and dental care to said persons in such instances.

SECTION 4. AMENDATORY 57 O.S. 1991, Section 228, is amended to read as follows:

Section 228. A. The State of Oklahoma, all counties and municipalities of this state and all of their officers, agents, servants and employees, and all nonprofit organizations are hereby immune from liability for torts committed by or against any ~~person~~ eligible offender described in subsection A of Section ~~4~~ 227 of this ~~act~~ title. The state, counties and municipalities waive their immunity from liability for all torts committed by any ~~person~~ eligible offender described in subsection A of Section ~~4~~ 227 of this ~~act~~ title to the extent of liability expressly and directly established in the Political Subdivision Tort Claims Act, Section 151 et seq. of Title 51 of the Oklahoma Statutes. ~~This waiver shall not include a waiver of liability for punitive or exemplary damages nor shall this waiver include a waiver of liability for intentional torts unless such torts are the direct result of deliberate indifference of the state, counties or municipalities.~~ Provided, in no event shall the state, counties or municipalities be held liable

for a decision to place an ~~individual~~ eligible offender in any of the programs described in subsection A of Section ~~4~~ 227 of this ~~act~~ title.

The waiver of immunity of the state shall take effect at 12:01 a.m. on October 1, 1985.

B. As provided by law, the State of Oklahoma or any county or municipality of this state is authorized to purchase insurance policies or bonds or to self-insure to indemnify the state, county or municipality from any liability incurred pursuant to subsection A of this section. The state, county or municipality shall determine the daily cost of any such insurance policy, bond or self-insurance and such cost may be taxed and collected as costs from the client participant.

SECTION 5. AMENDATORY 57 O.S. 1991, Section 563.2, is amended to read as follows:

Section 563.2 A. A private prison contractor may contract with the federal government or another state to provide for housing, care and control of minimum or medium security level inmates, as provided by subsection H of this section, who are in the custody of the United States or another state, who do not have histories of escape, and who are sentenced to terms of incarceration for conviction of a felony, other than a felony that would be a capital offense if committed in this state or a sex-related offense, or who are sentenced to federal or state facilities for conviction of a misdemeanor, other than a sex-related offense, within a facility owned or operated by the private prison contractor. Provided, incarceration for misdemeanors shall be allowed only pursuant to subsection D of this section. Such private prison contractor may perform other functions related to said responsibilities.

B. Any offense which would be a crime if committed within a state correctional institution of this state shall be a crime if committed in a facility owned or operated by a private prison contractor.

C. A private prison contractor shall not employ any personnel convicted of a felony.

Any personnel of a facility owned or operated by a private prison contractor shall be authorized to carry and use firearms only in the manner provided in this subsection and only after completing training approved or provided by the Department of Corrections. Such personnel shall only be authorized to use firearms for the following purposes:

1. To prevent escape from the facility or from custody while being transported to or from the facility. As used in this paragraph, "to prevent escape from the facility" shall mean to prevent an incarcerated individual from crossing the secure perimeter of the facility; or

2. To prevent an act which would cause death or serious bodily injury to any person.

The Department of Corrections is authorized to provide training to personnel of the private prison contractor, pursuant to contract. The Department of Corrections shall charge a reasonable fee for the training, not to exceed the cost of such training. The provisions of this subsection shall not be construed to confer peace officer status upon any employee of the private prison contractor or to authorize the use of firearms, except as provided in this subsection. If an inmate escapes from the facility, personnel from the facility immediately shall inform the Department of Public Safety, the county sheriff and, if the facility is located within the boundaries of a municipality, the police department of the municipality.

D. A private prison contractor housing federal inmates or inmates of another state shall not accept:

1. any inmate who would be incarcerated in the facility for conviction of a misdemeanor, unless such incarceration in the facility is consistent with American Correctional Association requirements relating to the incarceration of inmates convicted of more serious offenses; or

2. any maximum security level inmate; ~~or~~

~~3. any inmate who is within sixty (60) days of release from incarceration.~~

E. If an inmate is ~~within thirty (30) days of release to be released~~ from incarceration, is released by court order, is to be placed on probation, is paroled, or if the federal government or sending state requests transfer or the return of the inmate, the private prison contractor immediately shall transfer or return the inmate to that state or in the case of federal prisons to the closest federal prison.

F. A private prison contractor housing federal inmates from jurisdictions other than Oklahoma, or inmates of another state shall not discharge any such inmate from custody nor allow any such inmate to leave the premises of the facility, except to comply with an order to appear in a court of competent jurisdiction, to receive medical care not available at the facility, or to comply with the provisions of subsection E of this section.

G. A private prison contractor housing federal inmates or inmates of another state shall be responsible for the reimbursement of all reasonable costs and expenses incurred by this state or a political subdivision of this state for legal actions brought in this state by or on behalf of any federal inmate or inmate of another state while incarcerated in the facility, including court costs, sheriff's mileage fees, witness fees, district attorney expenses, expenses of the office of Attorney General, indigent or public defender fees and costs, judicial expenses, court reporter expenses and any other costs, fees, or expenses associated with the proceedings or actions.

H. As used in this section, security level restrictions shall refer to the security levels applicable to inmates in institutions within the Department of Corrections, as determined by policy of the Department of Corrections, unless the Department of Corrections approves more restrictive levels of security as prescribed by the private prison contractor. Private prison contractors housing federal inmates or inmates of another state shall be bound by such security level classifications.

I. A private prison contractor shall not house inmates from this state with federal inmates or inmates from another state, unless segregated or otherwise housed in such a manner as to satisfy the Director of the Department of Corrections.

J. The State of Oklahoma shall not assume jurisdiction or custody of any federal inmate or inmate from another state housed in a facility owned or operated by a private prison contractor. Such inmates from another state shall at all times be subject to the jurisdiction of that state and federal inmates shall at all times be subject to federal jurisdiction. This state shall not be liable for loss resulting from the acts of said inmates nor shall this state be liable for any injuries to said inmates.

SECTION 6. REPEALER 57 O.S. 1991, Sections 504.4 and 504.6, are hereby repealed.

SECTION 7. This act shall become effective July 1, 1992.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 11th day of May, 1992.

President of the Senate

Passed the House of Representatives the 25th day of May, 1992.

Speaker of the House of Representatives