

ENROLLED SENATE
BILL NO. 671

BY: WEEDN of the SENATE

and

WILLIAMS of the HOUSE

AN ACT RELATING TO THE DEPARTMENT OF CORRECTIONS;
AMENDING 22 O.S. 1991, SECTIONS 982 AND 1277 AND 57
O.S. 1991, SECTIONS 502 (SECTION 1, CHAPTER 307,
O.S.L. 1991), 549, 557 AND 561, WHICH RELATE TO
COST AND EXPENSES OF CRIMINAL PROSECUTIONS FOR
INMATES, DEFINITIONS, PRESENTENCE INVESTIGATION
REPORTS AND INMATE TRUST FUNDS SERVICES OFFERED;
AUTHORIZING DEFENDANT TO PAY COST OF PRESENTENCE
INVESTIGATION; SETTING MAXIMUM FEE; AUTHORIZING THE
DEPARTMENT OF CORRECTIONS TO PAY CERTAIN FEE;
MODIFYING LANGUAGE; DELETING LANGUAGE; DELETING
PROVISION FOR PERSONS IN STATE TRAINING SCHOOLS TO
HAVE COSTS AND EXPENSES PAID BY THE STATE;
PROVIDING EXCEPTION FOR INMATES PROSECUTED WHILE IN
PREPAROLE CONDITIONAL SUPERVISION PROGRAM OR IN
CERTAIN PRIVATE PRISON FACILITIES; REQUIRING THE
DEPARTMENT OF CORRECTIONS TO PAY COST FOR HABEAS
CORPUS PROCEEDING; LIMITING EXPENSES TO A FLAT FEE;
STATING AMOUNT OF FEE; AUTHORIZING COURT TO ORDER
INMATE TO PAY COSTS AND EXPENSES; AUTHORIZING COURT
CLERK TO COLLECT COSTS AND EXPENSES; AUTHORIZING
TRANSFER OF CERTAIN COUNTY JAIL INMATES TO THE
DEPARTMENT OF CORRECTIONS; STATING CONDITIONS OF
TRANSFER; DEFINING TERM; AUTHORIZING THE DEPARTMENT
OF CORRECTIONS TO ACCESS COSTS OF INCARCERATION;
AUTHORIZING ADDITIONAL METHOD OF COLLECTION FOR

COSTS OF INCARCERATION; DIRECTING DEPOSIT OF
MONIES; PROVIDING FOR CODIFICATION; REPEALING 57
O.S. 1991, SECTION 502 (SECTION 14, CHAPTER 291,
O.S.L. 1991), WHICH IS A DUPLICATE SECTION AND
WHICH RELATES TO DEFINITIONS; 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 982, is amended to read as follows:

Section 982. A. Whenever a person is convicted of a felony except when the death sentence is imposed, the court shall, before imposing sentence to commit any felon to incarceration by the Department of Corrections, order a presentence investigation to be made by the Department. The court may order the defendant to pay a fee to the Department of Corrections not to exceed Two Hundred Fifty Dollars (\$250.00) for the presentence investigation, if in the opinion of the court the defendant has the ability to pay such fee.

B. The Department shall inquire into the circumstances of the offense. This information shall include the voluntary statement of the victim concerning the offense, the amount of the loss of the victim, and the criminal record, social history and present condition of the convicted person. The Department shall make a report of such investigation to the court, including a recommendation as to appropriate sentence, and specifically a recommendation for or against probation. Such reports must be presented to the judge so requesting, within a reasonable time, and upon the failure to so present the same, the judge may proceed with sentencing. Whenever, in the opinion of the court or the Department, it is desirable, the investigation shall include a physical and mental examination of the convicted person.

C. The presentence investigation reports so received by the court shall not be referred to, or be considered, in any appeal proceedings. Before imposing sentence, the court shall advise the defendant or his counsel and the district attorney of the factual contents and the conclusions of any presentence investigation or psychiatric examination and afford fair opportunity, if the defendant so requests, to controvert them. If either the defendant or the district attorney desires, such hearing shall be ordered by the court providing either party an opportunity to offer evidence proving or disproving any finding contained in such report, which shall be a hearing in mitigation or aggravation of punishment.

D. If the district attorney and the defendant desire to waive such presentence investigation and report, both shall execute a suitable waiver subject to approval of the court, whereupon the judge shall proceed with the sentencing.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 1277, is amended to read as follows:

Section 1277. A. The Department of Corrections shall pay a fee as provided in subsection D of this section for criminal prosecutions conducted in any county where a penal institution or

community correction center is located in this state when the prosecution involves:

1. A violation of any criminal law committed by any prisoner housed in any penal institution or community correction center of this state; or

2. A crime committed in furtherance of an escape, flight or concealment as a fugitive from any penal institution or community correction center of this state.

B. The provisions of subsection A of this section shall apply whether the prisoner is confined, permitted to be at large as a trusty or otherwise. Provided, however, the provisions of subsection A of this section shall not apply to crimes committed by prisoners classified as inmates in the House Arrest Program as defined by Section 502 of Title 57 of the Oklahoma Statutes, assigned to the Preparole Conditional Supervision Program as defined in Section 365 of Title 57 of the Oklahoma Statutes or incarcerated in any correctional facility which is not operated by or under contract with the Oklahoma Department of Corrections.

C. The cost of any habeas corpus proceedings instituted by any prisoner of any penal institution or community correction center which is operated by or under contract with this state shall be paid by the Department of Corrections out of any funds provided for the support and maintenance of the institution of which the person committing such crime, or instituting such habeas corpus proceedings, is a prisoner, upon the filing of a verified and itemized claim from the court clerk of the county where the proceedings were held.

D. The Department of Corrections shall pay a fee of Two Hundred Dollars (\$200.00) upon the filing of a criminal action pursuant to the provisions of paragraphs 1 or 2 of subsection A of this section, and an additional fee of Three Hundred Dollars (\$300.00) upon acquittal or conviction of each such prisoner prosecuted, regardless of the number of charges or counts which arise out of the same incident. The fee shall be paid to the district court fund of the county where the action arose. The fee shall be in lieu of any expenses authorized by law for a criminal prosecution and chargeable against the Department of Corrections.

E. Nothing in this section shall prohibit the court from ordering the costs and expenses of a criminal prosecution to be paid by the inmate or restrict the court clerk from collecting such costs and expenses from the inmate.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 51.1 of Title 57, unless there is created a duplication in numbering, reads as follows:

Any person who has the Acquired Immune Deficiency Syndrome (AIDS) disease who is confined in the county jail in violation of Section 1192.1 of Title 21 of the Oklahoma Statutes, whether convicted or pending trial, may be transferred to the Department of Corrections for extended medical care for the duration of the sentence imposed or pending trial. At the request of the medical officer, physician or surgeon employed by said jail, the county sheriff shall make application to the Department of Corrections for a transfer of the person and the Department of Corrections may accept the person under the following conditions:

1. The person's right to a speedy trial is not delayed by the transfer to a state facility;

2. The person's right to confer with legal counsel is not restricted by the transfer to a state facility;

3. The county agrees to a mutual exchange of inmates from the Department of Corrections for the medical care and custody of the person to be transferred;

4. The medical care or custody of the person is necessary to preserve the health and safety of the public, the inmates of the county jail or the person being transferred;

5. The person to be transferred may be adequately treated in the state facility; and

6. The state facility has medical bed space available for the person.

SECTION 4. AMENDATORY 57 O.S. 1991, Section 502 (Section 1, Chapter 307, O.S.L. 1991), is amended to read as follows:

Section 502. As used in this title, unless the context otherwise requires:

(a) "Board" means the State Board of Corrections;

(b) "Department" means the Department of Corrections of this state;

(c) "Institutions" means the Oklahoma State Penitentiary located at McAlester, Oklahoma; the Oklahoma State Reformatory located at Granite, Oklahoma; the Lexington Assessment and Reception Center located at Lexington, Oklahoma; the Joseph Harp Correctional Center located at Lexington, Oklahoma; the Jackie Brannon Correctional Center located at McAlester, Oklahoma; the Howard C. McLeod Correctional Center located at Farris, Oklahoma; the Mack H. Alford Correctional Center located at Stringtown, Oklahoma; the Ouachita Correctional Center located at Hodgen, Oklahoma; the Mabel Bassett Correctional Center located at Oklahoma City, Oklahoma; the R.B. "Dick" Conner Correctional Center located at Hominy, Oklahoma; the James Crabtree Correctional Center located at Helena, Oklahoma; the Jess Dunn Correctional Center located at Taft, Oklahoma; the John Lilley Correctional Center located at Boley, Oklahoma; the William S. Key Correctional Center located at Fort Supply, Oklahoma; the Dr. Eddie Walter Warrior Correctional Center located at Taft, Oklahoma; the Oklahoma City, Clara Waters and Kate Barnard Community Corrections Centers located at Oklahoma City, Oklahoma; the Tulsa Community Corrections Center located at Tulsa, Oklahoma; the Community Corrections Centers located at Lawton, Enid, Muskogee and McAlester; and other facilities under the jurisdiction and control of the Department of Corrections or hereafter established by the Department of Corrections;

(d) "Director" means the Director of the Department of Corrections;

(e) "Halfway house" means a private facility for the placement of inmates in a community setting for the purpose of reintegrating into the community inmates who are nearing their release dates. The term shall not include private prisons.

(f) "House arrest" means a program whereby persons committed to the Department of Corrections are authorized to be away from a correctional facility and are placed by the Department in a community for the purpose of reintegration of the person into society, pursuant to the provisions of Section 510.2 of this title; and

(g) "Private prison contractor" means:

(1) a nongovernmental entity or public trust which, pursuant to a contract with the Department of Corrections, operates an institution within the Department, or provides for the housing, care, and control of inmates and performs other functions related to said responsibilities within a minimum or medium security level facility not owned by the Department but operated by the contractor; or

(2) a nongovernmental entity or public trust which, pursuant to a contract with the United States or another state, provides for the housing, care, and control of minimum or medium security inmates in the custody of the United States or another state, and performs other functions related to said responsibilities within a facility owned or operated by the contractor.

SECTION 5. AMENDATORY 57 O.S. 1991, Section 549, is amended to read as follows:

Section 549. A. The State Board of Corrections shall have the following powers and duties with respect to the operation of prison industries and administration of inmate trust funds:

1. The power to make leases or other contracts consistent with the operation of prison industries, and to set aside land or facilities for the use of such industry;

2. The power to establish conditions for expenditures by the Department of Corrections from the Industries Revolving Fund;

3. The power to negotiate wages and working conditions on behalf of prisoners employed in prison industries;

4. The power to collect wages on behalf of the prisoner, to apportion inmate wages in accordance with the law; and the duty to preserve those wages reserved for the prisoner in an account for his benefit, and to establish procedures by which the prisoner can draw funds from this account under the conditions and limitations and for the purposes allowed by law; and

5. The duty to establish the percentages of such wages which shall be available for apportionment to inmate savings; to the inmate for his personal use; to the lawful dependents of the inmate, if any; to the victim of the inmate's crime; for payment of creditors; for payment of costs and expenses for criminal actions against such inmate; and to the Department of Corrections for costs of incarceration. Provided, that not less than twenty percent (20%) of such wages shall be placed in an account, payable to the prisoner upon his discharge or upon assignment to a prerelease program. Funds from this account may be used by the inmate for fees or costs in filing a civil action as defined in Sections 151 et seq. of Title 28 of the Oklahoma Statutes or for federal action as defined in Sections 1911 et seq. of Title 28 of the United States Code.

B. The State Board of Corrections shall cause to be placed in an account income from the inmate's employment and any other income or benefits accruing to or payable to and for the benefit of said inmate, including any workers' compensation or Social Security benefits.

1. From this account the State Board of Corrections may charge any inmate employed in private prison industries or any other inmate for costs of incarceration not to exceed fifty percent (50%) of any deposits made to said account.

2. The Department of Corrections shall pay into the Crime Victims Compensation Revolving Fund, Section 142.17 of Title 21 of the Oklahoma Statutes, an amount equal to five percent (5%) of the gross wages earned by inmates employed in a private prison industries program, said amount to be paid from the amount deducted for cost of incarceration.

3. Withdrawals and deposits shall be made according to rules and regulations established by the Board of Corrections.

C. The Department of Corrections may assess costs of incarceration against all inmates beginning on the effective date of this act. Such costs shall be a debt of the inmate owed to the Department of Corrections and may be collected as provided by law for collection of any other civil debt. In addition to the provisions of this section authorizing expenditure of inmate trust funds for costs of incarceration, any monies received for costs of incarceration shall be deposited in the Department of Corrections Revolving Fund.

SECTION 6. AMENDATORY 57 O.S. 1991, Section 557, is amended to read as follows:

Section 557. A. There is hereby created in the State Treasury a revolving fund for the Department of Corrections to be known as the Department of Corrections Revolving Fund. This revolving fund shall consist of monies received by each institution of the

Department as reimbursements for noninmate individual food consumption; reimbursements from other state agencies and entities of government; receipts from sale of excess by-products, excess property, and salvage items; receipts from other ancillary services of the institution, not otherwise provided by law; receipts from the fees provided for in Sections 982 and 991d of Title 22 of the Oklahoma Statutes; monies received for providing primary health care and outpatient services to prisoners in county jails; receipts by the Department for institutional care from wages earned by inmates while participating in the work release program; funds for prison rodeos and other special events; and any other receipts accruing to the credit of the Department of Corrections which are not directed by law to be deposited in another fund. Expenditures from said fund shall be for the general operating expenses of the Department of Corrections.

B. The Department of Corrections Revolving Fund shall also consist of those monies that are transferred to it by the Department of Corrections from the Industries Revolving Fund of the Department of Corrections for purposes as provided for in Section 541 of this title and expenditures shall be in accordance therewith. On July 1, 1983, any cash remaining in the Department of Corrections Industries Subsidiary Revolving Fund in excess of allotment balances or encumbrances for the fiscal year ending June 30, 1983, shall be transferred to the Department of Corrections Revolving Fund and on November 15, 1983, all cash remaining in the Department of Corrections Industries Subsidiary Revolving Fund shall be transferred to the Department of Corrections Revolving Fund.

C. The fund created by subsection A of this section shall be a continuing fund, under the control of the administrative authority of the Department of Corrections, and not subject to fiscal year limitations. Expenditures shall be made pursuant to the laws of the state and the statutes relating to the Department of Corrections and its institutions, and without legislative appropriation. Warrants for expenditures from said revolving fund shall be based on claims signed by an authorized employee or employees of the Department of Corrections and approved for payment by the Director of State Finance.

SECTION 7. AMENDATORY 57 O.S. 1991, Section 561, is amended to read as follows:

Section 561. A. The Department of Corrections is hereby authorized to provide for incarceration, supervision, and residential treatment at facilities other than those operated by the Department of Corrections. Services offered for persons under the custody or supervision of the Department are to include, but not be limited to, housing, alcoholism or drug treatment, mental health services, nursing home care, or halfway house placement. Such services must meet standards prescribed and established by the Board of Corrections for implementing such a program, including but not limited to standards concerning internal and perimeter security, discipline of inmates, educational and vocational training programs, employment of inmates, and proper food, clothing, housing, and medical care. Such services must be contracted for in accordance with Section 85.7 of Title 74 of the Oklahoma Statutes. Such services, if provided by private prison contractors, shall be contracted for as provided in subsections C through J of this section.

B. The Department of Corrections is hereby authorized to provide for the operation of correctional institutions of the Department by private prison contractors. Such operation shall meet standards prescribed by the Board of Corrections, including but not limited to, standards concerning internal and perimeter security, discipline of inmates, educational and vocational training programs, and proper food, clothing, housing, and medical care. Such services

shall be contracted for in accordance with the provisions of subsections C through J of this section.

C. A comprehensive file for all private prison contractors interested in and capable of operating an institution within the Department or providing for the housing, care, and control of inmates in a facility owned and operated by the contractor shall be maintained by the Department. These files shall include a completed application form, a resume of the contractor's staff and capability, a completed performance evaluation form for past projects on which the contractor has provided private prison services, a list of past contracts with this state, and a list of contracts to provide similar services to other states or to the United States.

The file shall include the mailing address of each private prison contractor.

Any person or firm wishing to be a private prison contractor may request at any time to be included in the comprehensive file, and shall be provided necessary forms within twenty (20) days of the request and the Department shall add such contractor to the list within twenty (20) days of receipt of a properly completed application.

The Department may solicit evaluation of work done by private prison contractors from members of the private sector, which evaluation shall be part of the comprehensive file.

D. If the Department intends to secure the services of a private prison contractor, all persons and firms included in the file shall be notified through the mail of such intent. Such notification shall contain the following information:

1. Description and scope of the project or projects;
2. Estimated time schedule for project;
3. Last date for submitting notice of interest in performing services to Director; and
4. Other pertinent data.

Private prison contractors desiring consideration shall meet the requirements of this section and to be considered shall submit a letter expressing interest in the project to the Department within thirty (30) days of the postmark date of the letter of notification mailed by the Department. Contractors shall file an updated application form at the request of the Department.

E. The Department shall define the scope of a proposed project, determine the various project components, phases and timetables, and prepare detailed project descriptions to guide prospective contractors. Before the Department awards a contract to a private prison contractor, the plans shall be approved by the Board.

F. The Department shall review the files of the private prison contractors desiring consideration for the project, and shall select no less than three and no more than five contractors for more detailed consideration. In the event interviews for more than one contract are being considered at the same time, the number of contractors selected for more detailed consideration should be at least twice the number of contracts contemplated. This initial screening should consider the requirements of the project, as well as the following factors to be determined from the comprehensive file, and replies to inquiries to former clients:

1. Specialized experience in the type of work contemplated;
2. Capacity of the contractor to accomplish the work in the required time; and
3. Past performance, from the performance evaluation form.

G. A full report of the evaluation procedures and recommendations of the Department shall be prepared by the Department and submitted to the Board for the independent review of the entire process.

H. The Department shall select the contractor whose qualifications and project proposal most substantially meet the

criteria of the project description. The Department shall negotiate the contract with the selected contractor, which contract shall include a fair and reasonable fee. The negotiated scope and fee shall be reported to the Board for the approval of the award of the contract. The contract shall be sent to the Department of Central Services for approval or disapproval. If the Department of Central Services disapproves the contract or the Department and the selected contractor cannot reach an agreement, the Department may either renegotiate with the selected contractor or begin negotiations with the next-choice contractor. Should the Department be unable to negotiate a satisfactory contract with any of the three selected contractors, the Department shall select additional contractors in order of their competency and qualifications and shall continue negotiations in accordance with the provisions of this section until an agreement is reached.

I. Should there be an inadequate expression of interest in the project, the Director and the Board shall confer to add additional private prison contractors for consideration which are known to be appropriate for the project.

J. The Department of Central Services shall render assistance to the Department of Corrections in implementing the contracting procedures provided for in this section. The Department of Central Services may have a representative at any meeting involving negotiations of a contract between the Department and a private prison contractor.

K. The Director of Central Services is authorized to lease real property and improvements thereon to a private prison contractor in conjunction with a contract for private management of a state correctional institution located or to be built on the property. Said lease may be entered into for one (1) year periods, renewable at the sole option of the State of Oklahoma, but not to exceed a cumulative period of fifty (50) years.

L. Contracts awarded to private prison contractors pursuant to the provisions of this section shall be entered into for a period of one (1) year, subject to renewal at the option of the State of Oklahoma for a cumulative period not to exceed fifty (50) years.

M. No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the Board of Corrections:

1. that the contractor possesses the necessary qualifications and experience to provide the services specified in the contract;

2. that the contractor can provide the necessary qualified personnel to implement the terms of the contract;

3. that the financial condition of the contractor is such that the terms of the contract can be fulfilled;

4. that the contractor has the ability to comply with applicable court orders and corrections standards; and

5. that, in the case of a contractor who will be providing the services in a nondepartmental facility operated by said contractor, the contractor shall be able to meet accreditation standards and receive accreditation, as required by the terms of the contract pursuant to subsection R of this section.

N. No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the Board that the contractor can obtain insurance or provide self-insurance to:

1. indemnify the state against possible lawsuits arising from the operation of prison facilities by the contractor; and

2. compensate the state for any property damage or expenses incurred due to the operation of prison facilities.

O. A private prison contractor shall not be bound by state laws or other legislative enactments governing the appointment, qualifications, duties, salaries, or benefits of wardens,

superintendents, or other correctional employees, except that any personnel authorized to carry and use firearms shall comply with the certification standards required by the provisions of Section 3311 of Title 70 of the Oklahoma Statutes and be authorized to use firearms only to prevent a felony, to prevent escape from custody, or to prevent an act which would cause death or serious bodily injury to the personnel or to another person.

P. Any offense which would be a crime if committed within a state correctional institution also shall be a crime if committed in an institution or facility operated by a private prison contractor.

Q. The Director or his designee shall monitor the performance of the contractor.

R. Any contract between the Department and a private prison contractor, whereby the contractor provides for the housing, care, and control of inmates in a nondepartmental facility operated by the contractor, shall contain, in addition to other provisions, terms and conditions:

1. Requiring the contractor to provide said services in a facility which meets accreditation standards established by the American Corrections Association;

2. Requiring the contractor to receive accreditation for said facility from the American Corrections Association, within three (3) years of commencement of operations of the facility;

3. Requiring the contractor to obtain written authorization from the governing board of any municipality in which the facility is to be located, or if the facility is not to be located within a municipality, written authorization from the board of county commissioners of the county in which the facility is to be located; and

4. Granting the Department the option at the beginning of each fiscal year to purchase or lease, at a predetermined price, any such facility.

SECTION 8. REPEALER 57 O.S. 1991, Section 502 (Section 14, Chapter 291, O.S.L. 1991), is hereby repealed.

SECTION 9. Sections 1, 2, 4, 5, 6 and 7 of this act shall become effective September 1, 1992.

SECTION 10. 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.