

SHORT TITLE: Costs of incarceration; requiring prisons and jails to charge and collect costs of incarceration; directing incarceration costs be collected by civil procedures; specifying other collection methods; effective date; emergency.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 1125

By: Rozell

AS INTRODUCED

An Act relating to costs of incarceration; amending 11 O.S. 1991, Section 14-113, 19 O.S. 1991, Section 746, 22 O.S. 1991, Section 991a-4, as last amended by Section 1, Chapter 187, O.S.L. 1993 (22 O.S. Supp. 1993, Section 991a-4), 57 O.S. 1991, Sections 15, 16, 17, 38, as amended by Section 1, Chapter 293, O.S.L. 1992, 365, as amended by Section 7, Chapter 125, O.S.L. 1993, 510.2, as amended by Section 2, Chapter 276, O.S.L. 1993, Section 5, Chapter 276, O.S.L. 1993, 549, as last amended by Section 2, Chapter 29, O.S.L. 1993 and Section 5, Chapter 187, O.S.L. 1993 (57 O.S. Supp. 1993, Sections 38, 365, 510.2, 510.9, 549 and 611), which relate to liability for certain municipal and county jail costs, United States prisoners, jail costs, reimbursement to counties for holding state prisoners, Preparole Conditional Supervision Program, House Arrest Program, Electronic Monitoring Program, inmate funds, and Specialized Supervision Program; providing liability for incarceration costs; requiring prisons and jails to charge and collect costs of incarceration; defining costs of incarceration; modifying language; deleting language; requiring certain medical care regardless of ability to pay; prohibiting incarceration for nonpayment of costs;

modifying references; directing incarceration costs be collected by civil procedures; specifying other collection methods; providing for cost lien; construing certain provision; specifying cost for federal prisoners; prohibiting charge of certain reimbursed amounts; directing certain costs be paid from inmate's account; changing inmate's payment to certain fund; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 11 O.S. 1991, Section 14-113, is amended to read as follows:

Section 14-113. A. When a defendant is in the custody of a municipal jail, he shall be liable for the costs of his incarceration and all expenses relating thereto. Incarceration costs shall include the actual cost for providing food, clothing, housing, medical and dental care or treatment, education or other rehabilitation services, programs or training, transportation, supervision, and any other expense paid by the custodial municipality shall only be liable for the.

B. ~~The cost of medical care for conditions that are not preexisting prior to arrest and that arise due to acts or omissions of the municipality shall be the liability of such municipality and not related to incarceration costs. A municipality shall not be liable for preexisting conditions, provided, however, in no event shall medical care be withheld due to the person's inability to pay such expense at any time emergency medical care is required for such condition.~~ Preexisting conditions are defined as those illnesses

beginning prior to arrest or injuries sustained ~~outside~~ before a person is in the peaceable custody of the municipal jail law enforcement officer.

C. An inmate receiving medical care for a preexisting condition ~~or a condition not caused by the acts or omissions of the municipality~~ shall be liable for payment of the cost of care, including but not limited to, medication, medical treatment, ~~and~~ transportation and supervision costs, for or relating to the condition requiring treatment.

D. Incarceration costs and costs relating to preexisting conditions shall be collected as provided by law for collection of civil debts, except as provided in Section 15 of Title 57 of the Oklahoma Statutes or otherwise provided in this act. Funds received for incarceration costs and costs for preexisting conditions shall accrue to the benefit of the municipal jail to be expended for jail operations, law enforcement and collection of incarceration costs.

SECTION 2. AMENDATORY 19 O.S. 1991, Section 746, is amended to read as follows:

Section 746. A. When a defendant is in the custody of a county jail, he shall be liable for the costs of his incarceration and all expenses relating thereto. Incarceration costs shall include the actual costs for providing food, clothing, housing, medical and dental care or treatment, education or other rehabilitation services, programs or training, transportation, supervision, and any other expense paid by the custodial county shall only be liable for the.

B. The cost of medical care for conditions that are not preexisting prior to arrest and that arise due to acts or omissions of the county shall be the liability of such county and not related to incarceration costs. A county shall not be liable for preexisting conditions, provided, however, in no event shall medical care be withheld due to the defendant's inability to pay such

expense at any time emergency medical care is required for such condition. Preexisting conditions are defined as those illnesses beginning prior to arrest or injuries sustained before a person is in the peaceable custody of the county's officers.

C. An inmate receiving medical care for a preexisting condition ~~or a condition not caused by the acts or omissions of the county~~ shall be liable for payment of the cost of care, including but not limited to, medication, medical treatment, ~~and~~ transportation and supervision costs, for or relating to the condition requiring treatment.

D. Incarceration costs and costs relating to preexisting conditions shall be collected as provided by law for collection of civil debts, except as provided in Section 15 of Title 57 of the Oklahoma Statutes or otherwise provided in this act. Funds received for incarceration costs and costs for preexisting conditions shall accrue to the benefit of the county jail to be expended for jail operations, law enforcement and collection of incarceration costs.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 991a-4, as last amended by Section 1, Chapter 187, O.S.L. 1993 (22 O.S. Supp. 1993, 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 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 Department 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 Department shall interview the offender and advise him of the requirements and conditions of the Program. The Department 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. Probation or conditional probation;

9. Confinement in a county jail for a period not to exceed one (1) year, ~~night;~~

10. Night or weekend incarceration pursuant to the provisions of Section 991a-2 of this title; ~~or incarceration~~

11. 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. In counties with a population of five hundred fifty thousand (550,000) or more persons that operate an existing program, the Department of Corrections is hereby authorized to reimburse the county sheriff, pursuant to paragraph § 11 of subsection C of this section, the cost of necessary expenses for confinement in the county jail for any eligible offender as defined in subsection B of this section. Such reimbursement shall be subject to appropriation by the Legislature. The Department may promulgate rules and procedures for submitting claims for reimbursements.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. Any person sentenced to the Community Service Sentencing Program under the provisions of this section shall be liable for the costs of his incarceration and participation in said Program. The inability to pay all or part of any cost of the Program or incarceration shall not prohibit any person from participating in said Program. The judge shall not be required to inquire into the person's ability to pay any cost prior to imposing sentence. Upon a person being sentenced to the Program, the county sheriff shall inquire into the person's ability to pay his incarceration costs and shall proceed to collect such costs against the offender as required by law. Any funds received for incarceration costs shall accrue to the benefit of the county jail and shall be expended to defray the costs of operating the Program, expanding the Program and collection of incarceration costs.

K. 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 4. AMENDATORY 57 O.S. 1991, Section 15, is amended to read as follows:

Section 15. ~~When any poor convict shall have been~~ A. Any person confined in any state prison, city, town or county jail on or after the effective date of this act shall be liable for the space of six (6) months, for nonpayment of fine and costs only, or either of them, his incarceration and all expenses relating thereto. Incarceration costs shall include the actual costs for providing food, clothing, housing, medical and dental care or treatment, education or other rehabilitation services, programs or training, transportation, supervision, and any other expense paid by the Department of Corrections, when the person is in the custody of the Department or any other expense paid by the sheriff of the county or other jail keeper in any city or town in which such person shall be imprisoned.

B. The Department of Corrections, county sheriff and other jail keeper having a person in his custody shall make a report thereof to any two justices of the peace for such county; if be required by such justices, the said keeper shall bring such convict before them, either at the prison, or at such other convenient place thereto as they shall direct; the said justices shall proceed to inquire into the truth of said report, and if they shall be satisfied that the report is true, and the convict has not had since his conviction any estate, real or and personal, with which he of the person in their custody and proceed to collect the incarceration costs associated with such person for any periods of custody or confinement. No jail keeper or county sheriff shall charge any person in his custody any amount which has been reimbursed by the Department of Corrections or other jail keeper. The procedures for collecting incarceration costs shall be those provided by law for collection of civil debts,

except as provided in subsection D of this section or otherwise by the provisions of this act.

C. No person shall be imprisoned for nonpayment of any fine, cost or incarceration costs, unless such person could have paid the sum for the nonpayment of which he was committed, they shall make a certificate thereof to the sheriff of the county, and direct him to discharge such convict from prison and the sheriff shall forthwith discharge him willfully refused to pay after the court ordered the payment of such sum. The court may at any time upon petition from the custodial authority convert any amount owing for incarceration costs to community service hours, provided, the amount owing shall be converted based upon minimum wage standards.

D. Any costs owing for incarceration shall be considered part of the penalty and costs associated with the crime committed and shall not be dischargable in any bankruptcy proceeding. The costs shall be a continuing obligation owed to the State of Oklahoma, its political subdivisions or both the state and its political subdivisions until completely satisfied, and, in addition, when reduced to judgment shall be a lien against any real or personal property in which the person has or subsequently acquires any right, title or interest until completely satisfied. Upon notice to the Oklahoma State Tax Commission from the custodial authority, the cost lien shall be considered perfected and, thereafter, any Oklahoma State income tax refund available in part or full to the person or any property in which the person has or subsequently acquires any right, title or interest when sold, transferred or purchased shall be obligated for payment of the cost lien, except, however, unpaid child support obligations shall have first priority for payment from any income tax refund as provided by law.

E. Nothing in this section shall be construed to limit or prohibit the collection of any costs of incarceration incurred prior to the effective date of this act, provided law existed authorizing

collection of such costs at the time of a person's actual incarceration.

SECTION 5. AMENDATORY 57 O.S. 1991, Section 16, is amended to read as follows:

Section 16. When a prisoner shall be delivered to a sheriff or keeper of any jail by the authority of the United States, the sheriff or keeper shall receive the prisoner, and commit him accordingly; and every sheriff or keeper of the jail refusing or neglecting to take possession of a prisoner delivered to him by the authority aforesaid, shall be subject to the ~~same pains and penalties as~~ provided by law for neglect or refusal to commit any prisoner delivered to him under the authority of the state. ~~And any~~ Any sheriff or keeper of any jail who shall ~~suffer to~~ allow an escape of any prisoner committed to his custody by the authority of the United States, shall be subject to the ~~same pains and penalties as~~ provided for ~~suffering to~~ allowing an escape of any prisoner committed to his custody under the authority of the state, ~~and the allowance for the maintenance.~~ The costs of incarceration of any prisoner committed as aforesaid shall be no greater than that made for prisoners committed under the authority of the state Forty-five Dollars (\$45.00) per day per prisoner.

SECTION 6. AMENDATORY 57 O.S. 1991, Section 17, is amended to read as follows:

Section 17. The United States shall be liable to pay for the support and keeping of said prisoners ~~the same charges and allowances as are allowed for the support and keeping of prisoners committed under authority of this state~~ as provided in Section 16 of this title.

SECTION 7. AMENDATORY 57 O.S. 1991, Section 38, as amended by Section 1, Chapter 293, O.S.L. 1992 (57 O.S. Supp. 1993, Section 38), is amended to read as follows:

Section 38. A. The Department of Corrections shall reimburse any county, which is required to retain an inmate pursuant to paragraph 2 of Section 37 of this title, in an amount not to exceed Seven Dollars (\$7.00) per day for each inmate during such period of retention. The proceeds of this reimbursement shall be used to defray expenses of equipping and maintaining the jail and payment of personnel. The Department of Corrections shall reimburse the county for the actual costs paid for any emergency medical care for physical injury or illness of the inmate retained under this resolution if the injury or illness is directly related to the incarceration and the county is required by law to provide such care for inmates in the jail. The Director may accept any inmate required to have extended medical care upon application of the county.

B. Any county receiving a reimbursement under subsection A of this section for medical expenses or housing of any inmate shall not charge the reimbursed amount against the inmate as part of incarceration costs. However, a county shall charge any amount not reimbursed. The Department of Corrections shall charge the inmate any amount paid to any county for his medical care and any other incarceration costs relating to said inmate, including county reimbursements provided in this section.

SECTION 8. AMENDATORY 57 O.S. 1991, Section 365, as amended by Section 7, Chapter 125, O.S.L. 1993 (57 O.S. Supp. 1993, Section 365), is amended to read as follows:

Section 365. A. Whenever the population of the prison system is certified by the State Board of Corrections as exceeding ninety-five percent (95%) of its capacity, as defined in Section 571 of this title, the Department of Corrections and the Pardon and Parole Board shall implement a Preparole Conditional Supervision Program until such time as the population is reduced to ninety-two and one-

half percent (92 1/2%) of capacity, for persons in the custody of the Department of Corrections who meet the following guidelines:

1. Only inmates who are otherwise eligible for parole, pursuant to Sections 332.7 and 332.8 of this title, shall be eligible to participate in this program;

2. An inmate shall serve at least fifteen percent (15%) of his sentence of incarceration and be within one (1) year of his regularly scheduled parole consideration date or be within twenty-one (21) months of his projected release date, prior to being eligible for this program; and

3. Only inmates who have attained the proficiency level established by Section ~~3~~ 510.7 of this ~~act~~ title, unless exempted by said section, or who comply with education requirements as provided in subsection C of Section ~~4~~ 510.8 of this ~~act~~ title shall be eligible for participation in this program.

B. Upon an inmate becoming eligible for this program it shall be the duty of the Pardon and Parole Board, with or without application being made, to cause an examination to be made of the criminal record of the inmate and to make inquiry into the conduct and the record of said inmate during his confinement in the custody of the Department of Corrections.

C. Upon favorable recommendation by the Pardon and Parole Board, notification shall be made to the Department of Corrections that said inmate has been recommended to be placed in this program.

D. Prior to the placement of an inmate on Preparole Conditional Supervision, the Department shall provide written notification to the sheriff and district attorney of the county in which any person on Preparole Conditional Supervision is to be placed and to the chief law enforcement officer of any incorporated city or town in which said person is to be placed of the placement of the person on Preparole Conditional Supervision within the county or incorporated city or town. The Department also shall provide written

notification of the placement of the person on Preparole Conditional Supervision within the county or incorporated city or town to any victim of the crime for which the inmate was convicted by mailing the notification to the last-known address of the victim, if such information is requested by the victim. The Department of Corrections shall not give the address of the inmate to any victim of the crime for which the inmate was convicted.

E. Should an inmate violate any rule or condition during the period of community supervision, the inmate shall be subject to disciplinary proceedings as established by the Department of Corrections.

F. Any inmate who escapes from this program shall be subject to the provisions of Section 443 of Title 21 of the Oklahoma Statutes.

G. Any inmate who fails to satisfactorily attend and make satisfactory progress in the educational program in which the inmate has been required to participate as a condition of eligibility for this program shall have his or her eligibility for this program revoked. Any such inmate shall be returned to confinement in the custody of the Department of Corrections.

H. Any inmate assigned to the Preparole Conditional Supervision Program pursuant to the provisions of this section shall be liable for costs and fees associated with the program while assigned to the program. The inability to pay all or part of such costs or fees at the time of consideration for the program shall not prohibit the assignment of any inmate. The Department shall proceed to collect the costs associated with the Preparole Conditional Program as part of the incarceration costs required by law to be collected.

SECTION 9. AMENDATORY 57 O.S. 1991, Section 510.2, as amended by Section 2, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1993, Section 510.2), is amended to read as follows:

Section 510.2 A. The Department of Corrections may implement a house arrest program for persons in the custody of the Department, who meet the following guidelines:

1. Only inmates who are incarcerated for a nonviolent offense as defined in Section 571 of this title, or inmates who are within six (6) months of their projected release date, except those convicted of a sex-related offense or denied parole within the previous twelve (12) months pursuant to Section 332.7 of this title, shall be eligible to participate in the house arrest program.

2. An inmate shall serve at least fifteen percent (15%) of his sentence of incarceration prior to being assigned to the house arrest program.

B. The total number of persons assigned to the house arrest program shall not exceed fifteen percent (15%) of the total population of persons committed to the custody of the Department of Corrections, excluding those on probation and parole; provided, if said total population of persons committed to the custody of the Department decreases so that the percentage of persons on house arrest exceeds fifteen percent (15%) of that population, the Department shall not be required to remove inmates from the program.

Inmates assigned to the house arrest program shall remain in the program until the completion of the sentence or until the inmate is otherwise removed from the program. An inmate assigned to the house arrest program ~~may~~ shall be ~~required to pay~~ liable for the costs of supervision or other costs or fees associated with the program while assigned to the house arrest program. ~~The Department of Corrections shall determine whether the inmate has the ability~~ inability to pay all or part of such costs and fees at the time of consideration for the program shall not prohibit the assignment of any inmate. The Department shall proceed to collect the costs associated with the house arrest program as part of the incarceration costs required by law to be collected.

C. Prior to any eligible inmate assigned to the house arrest program being placed in a community setting, the Department shall deliver written notification to the sheriff and district attorney of the county, and the chief law enforcement officer of any incorporated city or town in which said inmate is to be supervised under the house arrest program. The district attorney shall disseminate such information to victims of the crime for which the inmate is serving sentence, when the victims are known to live in the same city, town or county.

D. After an inmate has been assigned to the house arrest program, failure to be granted parole pursuant to Section 332.7 of this title shall not be cause for removal from the program, provided the inmate has not violated the rules, regulations or conditions of the program. The inmate may remain assigned to the house arrest program, if otherwise eligible, until the completion of the sentence.

E. Any inmate violating any rule, regulation or condition of the house arrest program shall be subject to disciplinary proceedings as established by the Department of Corrections. Any inmate who escapes from the house arrest program shall be subject to the provisions of Section 443 of Title 21 of the Oklahoma Statutes.

F. Any inmate removed from the house arrest program for violation of any rule, regulation or condition of the program and reassigned by the Department to imprisonment in a correctional facility shall not be eligible for any future assignment to the house arrest program.

G. Upon an inmate assigned to the house arrest program becoming eligible for parole consideration, pursuant to Section 332.7 of this title, the Department of Corrections shall deliver the inmate, in person, to a correctional facility for interview, together with any Department records necessary for the Pardon and Parole Board's

investigation. Inmates assigned to the house arrest program shall not be allowed to waive consideration or recommendation for parole.

H. The Department of Corrections shall promulgate and adopt rules, regulations and procedures to implement the provisions of this section.

SECTION 10. AMENDATORY Section 5, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1993, Section 510.9), is amended to read as follows:

Section 510.9 A. There is hereby created the Electronic Monitoring Program for inmates in the custody of the Department of Corrections who are sentenced for a nonviolent offense as defined by Section 571 of ~~Title 57 of the Oklahoma Statutes~~ this title.

B. All eligible inmates assigned to the Electronic Monitoring Program shall first be processed and received through the Lexington Assessment and Reception Center. The Director of the Department of Corrections shall exercise his discretion in selecting eligible inmates for assignment to the Electronic Monitoring Program; provided, however, the following inmates shall not be eligible for assignment to the program:

1. Inmates convicted of a violent offense within the previous ten (10) years;

2. Inmates convicted of any violation of the provisions of the Trafficking in Illegal Drugs Act, Section 2-414 et seq. of Title 63 of the Oklahoma Statutes;

3. Inmates denied parole within the previous twelve (12) months pursuant to Section 332.7 of ~~Title 57 of the Oklahoma Statutes~~ this title;

4. Inmates convicted pursuant to Section 11-902 of Title 47 of the Oklahoma Statutes who are not receptive to substance abuse treatment and follow-up treatment;

5. Inmates removed from the Electronic Monitoring Program or any other alternative to incarceration authorized by law for

violation of any rule, regulation or condition of the program and reassigned to imprisonment in a correctional facility;

6. Inmates deemed by the Department to be a security risk or threat to the public; or

7. Inmates requiring educational, medical or other services or programs not available in a community setting as determined by the Department.

In addition, any inmate removed from the Electronic Monitoring Program for violation of any rule, regulation or condition of the program and reassigned to imprisonment in a correctional facility shall not be eligible for consideration for the Preparole Conditional Supervision Program, pursuant to Section 365 of ~~Title 57 of the Oklahoma Statutes~~ this title, until after the expiration of at least twelve (12) consecutive months of imprisonment at a correctional facility.

C. Every eligible inmate assigned to the Electronic Monitoring Program shall remain in such program until one of the following conditions has been met:

1. The inmate discharges the term of the sentence;

2. The inmate is removed from the Electronic Monitoring Program for violation of any rule, regulation or condition of the program and reassigned to imprisonment in a correctional facility;

3. The inmate is assigned by the Department to another alternative to incarceration authorized by law, except inmates assigned to the Electronic Monitoring Program shall not be considered for the Preparole Conditional Supervision Program, Section 365 of ~~Title 57 of the Oklahoma Statutes~~ this title, except as provided in subsection B of this section; or

4. The inmate is paroled by the Governor pursuant to Section 332.7 of ~~Title 57 of the Oklahoma Statutes~~ this title.

D. After an inmate has been assigned to the Electronic Monitoring Program, failure to be granted parole pursuant to Section

332.7 of ~~Title 57 of the Oklahoma Statutes~~ this title shall not be cause for removal from the program, provided the inmate has not violated the rules, regulations or conditions of the program. The inmate may remain assigned to the program, if otherwise eligible, until the completion of the sentence.

E. The Electronic Monitoring Program shall require active supervision of the inmate in a community setting by a correctional officer or other employee of the Department of Corrections with monitoring by an electronic bracelet or other device approved by the Department under such rules, regulations and conditions as may be established by the Department. If an inmate violates any rule, regulation or condition of the program, the Department may take necessary disciplinary action consistent with the rules established pursuant to this act, including reassignment to a higher level of security or removing the inmate from the program with reassignment to imprisonment in a correctional facility. Any inmate who escapes from the Electronic Monitoring Program shall be subject to the provisions of Section 443 of Title 21 of the Oklahoma Statutes.

F. Upon an inmate assigned to the Electronic Monitoring Program becoming eligible for parole consideration, pursuant to Section 332.7 of ~~Title 57 of the Oklahoma Statutes~~ this title, the Department of Corrections shall deliver the inmate, in person, to a correctional facility for interview, together with any Department records necessary for the Pardon and Parole Board's investigation. Inmates assigned to the Electronic Monitoring Program shall not be allowed to waive consideration or recommendation for parole.

G. Prior to any eligible inmate assigned to the Electronic Monitoring Program being placed in a community setting, the Department of Corrections shall deliver a written notification to the sheriff and district attorney of the county, and the chief law enforcement officer of any incorporated city or town in which the inmate is to be monitored and supervised under the program. The

district attorney shall disseminate such information to victims of the crime for which the inmate is serving sentence, if any, when the victims are known to live in the same city, town or county.

H. An inmate assigned to the Electronic Monitoring Program ~~may be required to pay the Department of Corrections~~ shall be liable for all or part of any monitoring equipment or fee, substance abuse treatment program or follow-up treatment expense, supervision cost, or other costs while assigned to the program. ~~The Department shall determine whether the inmate has the ability~~ inability to pay all or part of such fee or costs at the time of consideration for the program shall not prohibit the assignment of any inmate. The Department shall proceed to collect the costs associated with the Electronic Monitoring Program as part of the incarceration costs required by law to be collected.

I. The Department of Corrections shall promulgate and adopt rules, ~~regulation~~ regulations and procedures necessary to implement the Electronic Monitoring Program, including but not limited to methods of monitoring and supervision, disciplinary action, reassignment to higher and lower security levels, removal from the program, and costs of monitoring and supervision ~~to be paid by the inmate, if any.~~

SECTION 11. AMENDATORY 57 O.S. 1991, Section 549, as last amended by Section 2, Chapter 29, O.S.L. 1993 (57 O.S. Supp. 1993, 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;

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 Section 151 et seq. of Title 28 of the Oklahoma Statutes or for federal action as defined in Section 1911 et seq. of Title 28 of the United States Code, 28 U.S.C., Section 1911 et seq.; and

6. The power to invest the twenty percent (20%) mandatory savings of each inmate in an interest-bearing account with the interest accruing and payable to the Crime Victims Compensation Fund, as provided in Section 142.17 of Title 21 of the Oklahoma Statutes. The interest from each inmate's savings account shall be payable to the Crime Victims Compensation Fund, at such intervals as may be determined by the Board, in addition to any other payments to such fund required by the inmate's sentence or otherwise by law. An inmate shall not have the right, use or control of any interest derived from any funds placed in a mandatory savings account.

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~~ every inmate's income account the ~~State Board~~ Department of Corrections ~~may shall~~ charge ~~any inmate employed in private prison industries or any other~~ said inmate ~~for costs of incarceration not to exceed~~ fifty percent (50%) of any deposits made to said account which shall be applied to his costs of incarceration. Nothing in this paragraph shall limit or prohibit the Department from collecting any unpaid costs of incarceration by other authorized collection procedures.

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~~ after any amount deducted for cost of incarceration.

3. Withdrawals and deposits shall be made according to rules and regulations established by the Board of Corrections, except as otherwise provided by this section.

C. The Department of Corrections ~~may shall~~ assess costs of incarceration against all inmates beginning on the effective date of this act. Such costs shall be ~~a debt~~ an obligation of the inmate owed to the Department of Corrections and ~~may shall~~ be collected ~~as~~ under the procedures provided by law for collection of ~~any other~~ civil debt debts, except as provided in paragraph 1 of subsection B of this section, Section 15 of this title or otherwise provided by this act. ~~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, and shall be expended to assist counties with Community Service Sentencing Programs, to further collection of incarceration costs or for other expenses.

SECTION 12. AMENDATORY Section 5, Chapter 187, O.S.L. 1993 (57 O.S. Supp. 1993, Section 611), is amended to read as follows:

Section 611. A. There is hereby created the "Specialized Supervision Program". The Director of the Department of Corrections shall deliver written notification to the Governor and the Attorney General within ten (10) days from the time the population of the prison system exceeds ninety-seven and one-half percent (97.5%) of the Department's authorized capacity as defined by subsection K of this section. Within fifteen (15) days from the date of such notification, unless the Attorney General finds the population of the prison system does not exceed such authorized capacity and delivers a written objection to the Governor, the Governor shall declare a population state of emergency which shall authorize the assignment of certain eligible inmates to the Specialized Supervision Program pursuant to the provisions of this act. Upon an objection properly made to the Governor, the Governor shall have an additional fifteen (15) days for investigation of the objection, and unless the Governor finds a population state of emergency does not exist, the population state of emergency shall be in effect.

B. Upon declaration of the population state of emergency pursuant to this act, the Department of Corrections shall compile a list consisting of the names of those inmates serving sentences for nonviolent offenses as defined by Section 571 of ~~Title 57 of the Oklahoma Statutes~~ this title, who are within twenty-four (24) months of consideration for the Preparole Conditional Supervision Program pursuant to Section 365 of ~~Title 57 of the Oklahoma Statutes~~ this title, who have not been previously removed from the Specialized

Supervision Program as specified in this section, and who have completed at least one of the following requirements:

1. General Education Diploma (GED);
2. Adult literacy program;
3. Residential substance abuse program;
4. Participation for at least one hundred eighty (180) days on a prisoner public works project;
5. Maintained a class level four, as defined in Section 138 of ~~Title 57 of the Oklahoma Statutes~~ this title, for two consecutive years;
6. Vocational technical education; or
7. Other education or rehabilitation as may be determined appropriate by the Department.

The list shall be completed within three (3) days of the declaration of a population state of emergency and no other inmate shall be eligible for assignment to the Specialized Supervision Program after the list is completed.

C. The Director shall exercise his discretion in assigning eligible inmates to the Specialized Supervision Program from the list created pursuant to subsection B of this section, provided however, inmates who have been removed from the Specialized Supervision Program and reassigned to imprisonment in a correctional facility for violation of any rule, regulation or condition of the program shall not be eligible for any future assignment to the Specialized Supervision Program and, in addition, shall not be eligible to be considered for the Preparole Conditional Supervision Program, pursuant to Section 365 of ~~Title 57 of the Oklahoma Statutes~~ this title, until after the expiration of at least twelve (12) consecutive months of imprisonment at a correctional facility.

D. Any eligible inmate assigned to the Specialized Supervision Program shall remain in such program until one of the following conditions has been met:

1. The inmate discharges the term of the sentence;

2. The inmate is removed from the Specialized Supervision Program and reassigned to imprisonment in a correctional facility;  
or

3. The inmate is paroled by the Governor pursuant to Section 332.7 of ~~Title 57 of the Oklahoma Statutes~~ this title.

E. The Specialized Supervision Program shall require active supervision of the inmate in a community setting by a correctional officer or other employee of the Department of Corrections under such rules, regulations and procedures as may be established pursuant to ~~this act~~ Section 610 et seq. of this title. An inmate assigned to the Specialized Supervision Program shall be liable for costs and fees associated with the program while assigned to the program. The inability to pay all or part of such costs or fees at the time of consideration for the program shall not prohibit the assignment of any inmate. The Department shall proceed to collect the costs associated with the Specialized Supervision Program as part of the incarceration costs required by law to be collected.

F. The following shall apply when an inmate is alleged to have violated any rule, regulation or condition of the Specialized Supervision Program:

1. Written notice shall be given to the inmate specifying the alleged violation of any term or condition of the Specialized Supervision Program;

2. The inmate may request and shall be afforded a hearing concerning the alleged violation; and

3. The inmate may admit, deny or present mitigating evidence concerning the allegations.

The Department shall consider the evidence and determine by a preponderance of the evidence whether a violation has occurred. The Department may take necessary disciplinary action consistent with the rules established pursuant to this act, including reassignment

to a higher level of security or removing the inmate from the program with reassignment to imprisonment in a correctional facility.

G. Inmates assigned to the Specialized Supervision Program shall not be eligible for supervision pursuant to any interstate compact agreement until paroled by the Governor as required by law. Upon an inmate assigned to the Specialized Supervision Program becoming eligible for parole consideration pursuant to Section 332.7 of ~~Title 57 of the Oklahoma Statutes~~ this title, the Department of Corrections shall deliver the inmate, in person, to the correctional facility for interview, together with any Department records necessary for the Pardon and Parole Board's investigation. Inmates assigned to the Specialized Supervision Program shall not be allowed to waive consideration for parole or parole recommendation.

H. Prior to any eligible inmate assigned to the Specialized Supervision Program being placed in a community setting pursuant to the provisions of this act, the Department of Corrections shall deliver written notification to the sheriff and district attorney of the county, and the chief law enforcement officer of any incorporated city or town in which the inmate is to be supervised under the Specialized Supervision Program. The district attorney shall disseminate such information to victims of the crime for which the inmate is serving sentence, if the victims are known to live in the same city, town or county.

I. Within ten (10) days from the time the population of the prison system is decreased to ninety-five percent (95%) of the Department's authorized capacity, the Director shall deliver written notification to the Governor stating the population state of emergency is over. Additional inmates may not be assigned to the Specialized Supervision Program from the list created pursuant to subsection B of this section after the notice has been delivered to the Governor. Conclusion of a population state of emergency shall

not be construed to alter the assignment of any inmate supervised under the Specialized Supervision Program.

J. The Department shall promulgate and adopt rules, regulations and procedures necessary to implement the provisions of this act including but not limited to methods of supervision, disciplinary action, reassignment to higher or lower security levels, removal from the program, and costs of supervision ~~to be paid by the inmate, if any.~~

K. As used in this act, "authorized capacity" means that space available at correctional facilities and occupied by or ready for occupancy by inmates in the custody of the Department of Corrections as determined by the Director of the Department.

SECTION 13. This act shall become effective July 1, 1994.

SECTION 14. 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.

44-2-1745

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