

ENROLLED SENATE  
BILL NO. 565

By: Hobson of the Senate

and

Hamilton (Jeff) of the  
House

An Act relating to the Department of Corrections; amending 22 O.S. 1991, Section 991a-4, as amended by Section 1, Chapter 405, O.S.L. 1992 (22 O.S. Supp. 1992, Section 991a-4), which relates to the Community Service Sentencing Program; authorizing the Department of Corrections to reimburse certain counties for certain incarcerated offenders; limiting reimbursement; authorizing the Department to promulgate rules and procedures; amending 57 O.S. 1991, Sections 332.7 and 521, which relate to parole and custody of the Department of Corrections; deleting language; modifying requirements for parole consideration; authorizing assignment of inmates to certain programs; creating the Prison Population Management Act of 1993; providing short title; creating the Specialized Supervision Program; requiring Director of Department to deliver certain notice; requiring Governor to declare a population state of emergency; providing for objections; directing completion of certain listing of inmates; specifying criteria for eligibility; authorizing Director to exercise discretion in making inmate assignments; providing certain limitation on discretion; restricting certain inmates from consideration for certain programs; specifying duration of assignment; requiring active supervision of inmates; establishing certain procedure for violation of conditions of assignment; authorizing hearing and disciplinary action; disallowing certain supervision; requiring Department to deliver inmate and records for parole consideration and investigation; prohibiting certain waiver of parole consideration or recommendation; requiring certain notification prior to placing eligible inmate in community setting; requiring certain victims be notified; directing Director to notify Governor when prison population is decreased; prohibiting assignment of eligible inmates after certain notice; construing conclusion of state of emergency on certain assignment; directing Department to promulgate certain rules, regulations and procedures; defining term; providing for codification;

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, as amended by Section 1, Chapter 405, O.S.L. 1992 (22 O.S. Supp. 1992, 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~~ 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 Division~~ Department shall interview the offender and advise him of the requirements and conditions of the Program. ~~The Division~~ 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. 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. 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 8 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.

~~E.~~ 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.

~~F.~~ 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.

G. 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.

~~H.~~ 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.

~~I.~~ J. 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 332.7, is amended to read as follows:

Section 332.7 A. Upon completion of one-third (1/3) of the sentence of any person ~~confined in a penal institution~~ in the ~~state~~ custody of the Department of Corrections, such person shall be eligible for consideration for a parole, and it shall be the duty of the Pardon and Parole Board, with or without application being made, to cause an examination to be made at the penal institution where the person is ~~confined~~ assigned, and to make inquiry into the conduct and the record of the said person during his ~~confinement in said penal institution~~ custody in the Department of Corrections, which shall be considered as a basis for consideration of said person for recommendation to the Governor for parole. However, the Pardon and Parole Board shall not be required to consider for parole any person who has completed one-third (1/3) of his sentence if the person has participated in a riot or in the taking of hostages, or has been placed on escape status, while in the custody of the Department of Corrections. The Pardon and Parole Board shall adopt policies and procedures governing parole consideration for such persons.

B. The Pardon and Parole Board shall not recommend to the Governor any person who has been convicted of three or more felonies arising out of separate and distinct transactions, with three or more incarcerations for such felonies, unless such person shall have served the lesser of at least one-third (1/3) of the sentence imposed, or ten (10) years; provided that whenever the population of the prison system exceeds ninety-five percent (95%) of the capacity as certified by the State Board of Corrections, the Pardon and Parole Board may, at its discretion, recommend to the Governor for parole any person who is incarcerated for a nonviolent offense not involving injury to a person and who is within six (6) months of his or her statutory parole eligibility date.

C. Upon application of any person convicted and sentenced by a court of this state and relinquished to the custody of another state or federal authorities pursuant to Section 61.2 of Title 21 of the Oklahoma Statutes, the Pardon and Parole Board may determine a parole consideration date consistent with the provisions of this section and criteria established by the Pardon and Parole Board.

D. No person who is appearing out of the normal processing procedure shall be eligible for consideration for parole without the concurrence of at least three (3) members of the Pardon and Parole Board.

SECTION 3. AMENDATORY 57 O.S. 1991, Section 521, is amended to read as follows:

Section 521. Whenever a person is convicted of a felony and is sentenced to imprisonment that is not to be served in a county jail, he shall be committed to the custody of the Department of Corrections and shall be classified and assigned to ~~the Oklahoma State Penitentiary~~ a correctional facility, or to the Oklahoma State Reformatory Specialized Supervision Program pursuant to Sections 4 and 5 of this act, or to another facility program designated by the Department and authorized by law.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 610 of Title 57, unless there is created a duplication in numbering, reads as follows:

Sections 4 and 5 of this act shall be known and may be cited as the "Prison Population Management Act of 1993".

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 611 of Title 57, unless there is created a duplication in numbering, reads as follows:

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, 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, 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, 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, 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.

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.

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, 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 6. Section 1 of this act shall become effective July 1, 1993.

SECTION 7. 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 4th day of May, 1993.

President of the Senate

Passed the House of Representatives the 12th day of May, 1993.

Speaker of the House of Representatives