

ENROLLED HOUSE
BILL NO. 1249

By: Steidley, Webb, Pope,
Breckinridge, Perry and
Satterfield of the House

and

Dickerson and Wright of
the Senate

An Act relating to criminal procedure; creating the Oklahoma Truth In Sentencing Policy Advisory Commission; defining terms; establishing a uniform standard for the development of criminal justice policy; providing for membership, terms, travel reimbursements, quorum, meetings, appointment of chairman, staff and administrative and managerial support; requiring certain simulation model be available; setting priority of use of model; establishing duties; specifying primary and secondary duties; requiring felony and misdemeanor crimes be classified; requiring establishment of sentencing ranges; requiring criteria for sentencing; requiring the court to use certain sentencing criteria; specifying other responsibilities; requiring community corrections strategy; specifying purpose and goals of criminal justice and corrections systems; requiring legislative approval prior to implementation of certain provisions; construing certain policy and goals; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1501 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the "Oklahoma Truth In Sentencing Policy Advisory Commission". As used in this act, the term "Commission" means the Oklahoma Truth In Sentencing Policy Advisory Commission.

B. Sentences established for violations of the state's criminal laws should be based on the established purposes of our criminal justice and corrections systems. The Commission shall evaluate crimes, sentencing laws and policies in relation to both the stated purposes of the criminal justice and corrections systems, the criminal justice and corrections systems resources, and the availability of sentencing options. The Commission shall make recommendations to the Legislature for the modification of crimes, sentencing laws and policies, and for the addition, deletion or expansion of sentencing options as necessary to achieve policy goals within existing criminal justice and corrections systems resources.

C. As used in this act "criminal justice and corrections system" includes all activities and agencies, whether state or local, public or private, pertaining to the prevention, prosecution

and defense of offenses, or to the disposition of offenders under the criminal laws of this state. The "criminal justice and corrections systems" includes police, public prosecutors, defense counsel, courts,

correction agencies, mental health agencies, and all public and private agencies providing services in connection with those elements, whether voluntarily, contractually or by order of a court.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1502 of Title 22, unless there is created a duplication in numbering, reads as follows:

The Commission shall consist of fifteen (15) members as follows:

1. The Chief Justice of the Oklahoma Supreme Court shall appoint a sitting or former Justice of the Oklahoma Supreme Court who shall serve an initial term of four (4) years;

2. The Director of the Administrative Office of the Courts shall appoint an indigent defender, who shall serve an initial term of three (3) years;

3. The Director of the Department of Corrections or a designee of the Director;

4. The Chairman of the Pardon and Parole Board, or another parole board member serving as the designee of the Chairman;

5. The Chief Judge of the Court of Criminal Appeals or another judge on the Court of Criminal Appeals, serving as the designee of the Chief Judge;

6. A judge appointed by the Oklahoma Judicial Conference, who shall serve an initial term of two (2) years;

7. A sheriff to be appointed by the Oklahoma Sheriffs Association who shall serve an initial term of three (3) years;

8. One member of the public at large, to be appointed by the Governor, who is not currently licensed to practice law in the state, who shall serve an initial term of one (1) year;

9. One member of the House of Representatives, to be appointed by the Speaker of the House of Representatives who shall serve an initial term of two (2) years;

10. One member of the Senate, to be appointed by the President Pro Tempore of the Senate who shall serve an initial term of two (2) years;

11. The President Pro Tempore of the Senate shall appoint a representative from the Criminal Justice Systems Task Force Committee who is recommended by that organization and who shall serve an initial term of five (5) years;

12. The Speaker of the House of Representatives shall appoint a representative from the Crime Victims Compensation Board who is recommended by that organization and who shall serve an initial term of one (1) year;

13. The Chief Justice of the Oklahoma Supreme Court shall appoint the criminal defense attorney that is recommended by the President of the Trial Lawyers Association who shall serve an initial term of five (5) years;

14. A district attorney appointed by the District Attorneys Council who shall serve an initial term of five (5) years; and

15. The Attorney General, or an Assistant Attorney General to be appointed by the Attorney General, who shall serve an initial term of three (3) years.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1503 of Title 22, unless there is created a duplication in numbering, reads as follows:

Following the initial term of a member, the Commission members shall serve staggered terms of five (5) years or until a member ceases to hold the office or position that qualified the member for the appointment and until a successor is appointed and qualified. The following members shall be voting members:

1. The member appointed by the Governor;

2. The member of the House of Representatives;

3. The member of the Senate;
4. The member appointed by the District Attorneys Council;
5. The member appointed by the Director of the Administrative Office of the Courts;
6. The member appointed by the Chief Justice of the Supreme Court; and
7. The Chief Judge of the Court of Criminal Appeals or his designee.

All other members shall be nonvoting members. Vacancies occurring before the expiration of a term shall be filled for the unexpired term in the manner provided for the members first appointed.

The Commission members shall receive no salary for serving on the Commission. All Commission members who are not members of the Legislature shall receive necessary travel expenses in accordance with the provisions of the State Travel Reimbursement Act by the employing agency. Members of the Commission not employed by the state or its political subdivisions shall be reimbursed for travel expenses in accordance with the provisions of the State Travel Reimbursement Act by the appointing authority's employing agency. Legislative members shall be reimbursed pursuant to Section 456 of Title 74 of the Oklahoma Statutes.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1504 of Title 22, unless there is created a duplication in numbering, reads as follows:

The Commission shall have its initial meeting no later than September 1, 1994, at the call of the Chairman. The Chairman shall serve a term of one (1) year and shall be appointed by the President Pro Tempore of the Senate for the initial term and thereafter the appointing authority shall alternate between the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The Commission may hold meetings at the call of the Chairman or by any four members serving on the Commission, upon such notice and in such manner as may be fixed by the rules of the Commission. A majority of the voting members serving on the Commission shall constitute a quorum.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1505 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The Commission shall employ an Executive Director from candidates presented to it by the Chairman and the Director of the Administrative Office of the Courts. The Executive Director shall have appropriate training and experience to assist the Commission in the performance of its duties. The Executive Director shall be responsible for compiling the work of the Commission and drafting suggested legislation incorporating the Commission's findings for submission to the Legislature. The Executive Director shall be an unclassified employee, exempt from the Merit System.

B. Subject to the approval of the Chairman, the Executive Director shall employ such other staff and shall contract for services as is necessary to assist the Commission in the performance of its duties, and as funds permit. The Commission shall set the salaries of any staff and the Executive Director.

C. The Commission may, with the approval of the Legislative Service Bureau, meet in the legislative conference rooms, or may meet in an area provided by the Director of the Administrative Office of the Courts. The Commission staff shall use office space provided by the Criminal Justice Resource Center.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1506 of Title 22, unless there is created a duplication in numbering, reads as follows:

The Commission shall be administered under the direction and supervision of the Director of the Criminal Justice Resource Center. The Commission shall exercise all of its prescribed statutory powers as defined in this act independently of the head of that office, except that all management functions shall be performed under the direction and supervision of the Director of the Criminal Justice Resource Center. As used in this section, "management functions" means planning, organizing, staffing, directing, coordinating and budgeting.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1507 of Title 22, unless there is created a duplication in numbering, reads as follows:

The Commission shall have full and complete access to the use of the simulation model developed by and for the use of the Department of Corrections, and to any data resulting from the use of such model, and shall have first priority and authority to require the model be applied to a given fact situation, or theoretical change in the sentencing laws, when requested to do so by the Chairman, the Executive Director or the Commission as a whole.

The simulation model shall be available for use in responding to inquiries by any state legislator, or the Secretary of the Executive Branch Department of Safety and Security, in second priority to the work of the Commission.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1508 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The Commission shall have four primary duties and other secondary duties essential to accomplishing the primary duties. The Commission may establish subcommittees or advisory committees composed of Commission members to accomplish duties imposed by this section.

B. It is the legislative intent that the Commission attach priority to accomplish the following primary duties:

1. The classification of criminal offenses as described in Section 10 of this act and the formulation of sentencing structures as described in Section 11 of this act;

2. The formulation of proposals and recommendations as described in Sections 12 and 13 of this act;

3. The modification or recodification of the Penal Code of the State of Oklahoma as necessary to classify criminal offenses and formulate sentencing structures pursuant to the provisions of this act; and

4. The development of recommendations for a Truth in Sentencing Act which will adequately reflect the offense committed, reasonably safeguard society as a whole, provide an opportunity for rehabilitation of the offender, assure incarceration of the most violent offenders, and truthfully present the punishment actually to be exacted.

C. Once the primary duties of the Commission have been accomplished, the Commission shall have the continuing duty to monitor and review the criminal justice and corrections systems in this state to ensure that sentencing remains uniform and consistent, and that the goals and policies established by the state are being implemented by sentencing practices, and it shall recommend methods by which this ongoing work may be accomplished and by which the correctional population simulation model shall continue to be used by the state.

D. Upon adoption of a system for the classification of offenses formulated pursuant to Section 10 of this act, the Commission shall review all proposed legislation which creates a new criminal

offense, changes the classification of an offense, or changes the range of punishment for a particular classification, and shall make recommendations to the Legislature.

E. In the case of a new criminal offense, the Commission shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in Section 10 of this act. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission to recommend the proper classification placement.

F. In the case of proposed changes in the classification of an offense or changes in the range of punishment for a classification, the Commission shall determine whether such a proposed change is consistent with the considerations and principles set out in Section 10 of this act, and shall report its findings to the Legislature.

G. The Commission shall meet within ten (10) days after the last day for filing bills in the Legislature for the purpose of reviewing bills as described in subsections D, E and F of this section. The Commission shall include in its report on a bill an analysis based on an application of the correctional population simulation model to the provisions of the bill.

H. The Commission shall report its initial findings and recommendations to the First Session of the 45th Legislature (1995). The report shall describe the status of the Commission's work, and shall include any completed policy recommendations.

I. The final recommendations for the classification and ranges of punishments for felonies and misdemeanors, required by Section 10 of this act, and sentencing criteria established pursuant to Section 11 of this act, shall be submitted to the President Pro Tempore of the Senate, the Speaker of the House Representatives and the Governor prior to the convening of the Second Session of the 45th Legislature (1996).

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1509 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The Commission shall have the secondary duty of collecting, developing, and maintaining statistical data relating to sentencing and corrections so that the primary duties of the Commission will be formulated using data that is valid, accurate, and relevant to the state. All state agencies shall provide data as it is requested by the Commission. All meetings of the Commission shall be open to the public and the information presented to the Commission shall be available to any state agency or member of the Legislature.

B. The Commission shall have the authority to apply for, accept, and use any gifts, grants, or financial or other aid, in any form, from the federal government or any agency or instrumentality thereof, or from the state or from any other source including private associations, foundations, or corporations to accomplish any of the duties set out in this act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1510 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The Commission shall classify criminal offenses into felony and misdemeanor categories on the basis of their severity. The Commission may utilize either the criminal laws enacted as of the effective date of this act or a recommended modification or recodification of such criminal laws in performing its duties under the provisions of this act. Such classifications, if approved by the Legislature, shall become effective July 1, 1996. In determining the proper category for each felony and misdemeanor, the

Commission shall consider, to the extent that it has relevance, the following:

1. The nature and degree of harm likely to be caused by the offense, including whether the offense involves property, irreplaceable property, a person, a number of persons, or a breach of the public trust;

2. The deterrent effect a particular classification may have on the commission of the offense by others;

3. The current incidence of the offense in the state as a whole; and

4. The rights of the victim.

B. For each classification of felonies and misdemeanors formulated pursuant to this section, the Commission shall assign a suggested range of punishment. Such ranges, if approved by the Legislature, shall become effective July 1, 1996.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1511 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The Commission shall establish criteria for use by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case, including but not limited to:

1. Imposition of an active term of imprisonment;

2. Imposition of a term of probation;

3. Suspension of a sentence to imprisonment and imposition of probation with conditions, including house arrest, electronic monitoring, regular probation, intensive probation, restitution and community service;

4. Imposition of a fine;

5. Imposition of other sentencing alternatives;

6. Based upon the combination of offense and defendant characteristics in each case, the presumptively appropriate length of a term of probation, or a term of imprisonment;

7. Ordering multiple sentences to terms of imprisonment to run concurrently or consecutively; and

8. For a sentence to probation without a suspended sentence to imprisonment, the maximum term of confinement to be imposed if the defendant violates the conditions of probation.

B. The sentencing criteria shall take into consideration the goals, policies and purposes of the criminal justice and corrections systems, as set forth in Section 14 of this act.

C. In formulating criteria, the Commission also shall consider:

1. The nature and characteristics of the offense;

2. The severity of the offense in relation to other offenses;

3. The characteristics of the defendant that mitigate or aggravate the seriousness of the criminal conduct and the punishment deserved therefor;

4. The defendant's number of prior convictions;

5. The available resources and constitutional capacity of the Department of Corrections, other confinement facilities, and community-based sanctions;

6. The rights of the victims;

7. That felony offenders sentenced to an active term of imprisonment, or whose suspended sentence to imprisonment is activated, should serve a designated minimum percentage of their sentences before they are eligible for parole; and

8. That misdemeanor offenders sentenced to an active term of imprisonment, or whose suspended sentence to imprisonment is activated, should serve a designated minimum percentage of their sentence.

D. The Commission shall also consider the policy issues set forth in Section 14 of this act in developing its sentencing criteria. The Commission shall include with each set of sentencing criteria a statement of its estimate of the effect of the sentencing criteria on the Department of Corrections and local facilities, both in terms of fiscal impact and on inmate population. If the Commission finds that the proposed sentencing criteria will result in inmate populations in the Department of Corrections or local confinement facilities that exceed the authorized capacity, then the Commission shall present an additional set of criteria that are consistent with that capacity.

E. Beginning July 1, 1996, when imposing a criminal sentence, the court shall impose the sentence under the sentencing criteria formulated and adopted pursuant to this section if such criteria have been approved by the Legislature.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1512 of Title 22, unless there is created a duplication in numbering, reads as follows:

Using the studies of the Sentencing Release/Policy Committee, the Recodification Committee, and other analyses, including testimony from representatives of the bodies that conducted the analysis, the Commission shall:

1. Determine the long-range needs of the criminal justice and corrections systems and recommend policy priorities for those systems;

2. Determine the long-range information needs of the criminal justice and corrections systems and acquire that information as it becomes available;

3. Identify critical problems in the criminal justice and corrections systems and recommend strategies to solve those problems;

4. Assess the cost-effectiveness of the use of state and local funds in the criminal justice and corrections systems;

5. Recommend the goals, priorities and standards for the allocation of criminal justice and corrections funds;

6. Recommend means to improve the deterrent and rehabilitative capabilities of the criminal justice and corrections systems;

7. Propose plans, programs and legislation for improving the effectiveness of the criminal justice and corrections systems;

8. Determine the sentencing structures for parole decisions;

9. Examine the impact of mandatory sentence lengths as opposed to the deterrent effect of minimum mandatory terms of imprisonment;

10. Examine good time and earned credit practices;

11. Study the value of presentence investigations and reports;

12. Consider the rehabilitative potential of the offender and the appropriate rehabilitative placement;

13. Examine the impact of imprisonment on the families of offenders;

14. Examine the impact of imprisonment on the ability of offenders to make restitution; and

15. Study the costs and consequences of criminal behavior in Oklahoma and consider the value of preventing crimes by using incarceration to deter criminals from future crimes.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1513 of Title 22, unless there is created a duplication in numbering, reads as follows:

The Commission shall recommend a comprehensive community corrections strategy and organizational structure of the state based upon the following:

1. A review of existing community-based corrections programs in the state;

2. The identification of additional types of community corrections programs, including residential programs, necessary to create an effective continuum of corrections sanctions in Oklahoma;

3. The identification of categories of offenders who would be eligible for sentencing to community corrections programs and the impact that the use of a comprehensive range of community-based sanctions would have on sentencing practices;

4. A form of state oversight and coordination to ensure that community corrections programs are coordinated in order to achieve maximum impact;

5. A mechanism for state funding and local community participation in the operation and implementation of community corrections programs; and

6. An analysis of the rate of recidivism of clients under supervision of the existing community-based corrections programs in the state and rate of recidivism of clients committing crimes at any time subsequent to their entry into a new community-based corrections program.

The Commission shall identify the fiscal requirements of any recommendations proposed pursuant to this section.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1514 of Title 22, unless there is created a duplication in numbering, reads as follows:

The following purposes and policies of the criminal justice and corrections systems are hereby established:

1. Protection of the public. Incarceration should be viewed by the court both as punishment and as a means of protecting the public. Limitations on the freedom of the offender and the appropriate level of custody should be dictated in the first instance by the nature of the offense, the violent character of the offender, the proclivity of the offender to engage in criminal conduct as demonstrated by his criminal record, and the sound judgment of the sentencing court after taking into account all of the relevant aggravating and mitigating factors involved in the offender's record of criminal conduct.

2. Punishment of the offender. After the interests of public protection have been addressed, consideration should be given to restriction of the liberty of the offender in such manner and to such extent as is necessary to demonstrate clearly that the offender's conduct is unacceptable to society and to discourage a repetition of such conduct. In determining the appropriate punishment, the court should consider a range of sanctions at the state or community level which may include incarceration, various degrees of restrictions on the offender's liberty including house arrest, electronic monitoring, various degrees of supervision, community penalties, community service, restitution, reparation, or fines.

3. Rehabilitation of the offender. Every sentencing plan should consider treatment and rehabilitative needs of the offender to the extent that it addresses the cause of the criminal behavior and, therefore, might assist in correcting such behavior. The offender should be enrolled in a program of rehabilitation over a definite minimal period of time. The program of rehabilitation should involve work and recreation and may involve education, psychological or psychiatric counseling, treatment for alcohol or drug abuse and sexual aggression either within or without the prison walls as the individual case may indicate. The court may recommend remedies for alcoholism, substance abuse, mental illness, education

and employment deficiencies, and may order community-based offenders to pay for such treatment to the extent the offender is able. Public institutions should respond to the court order at no cost to the indigent offender. Where treatment is not available from public institutions, the state should purchase appropriate treatment from the private sector.

4. Restitution and reparation. When appropriate, the sentencing plan should provide for restitution or reparation to the victim or victims, whether they be individual citizens, corporations, or society as a whole, to be paid as soon as practicable. Such restitution or reparation should include repayment for any property stolen or damaged, medical costs and lost wages of the victims, court costs and reasonable costs to cover pretrial detention, and restitution to the community through community service. In those cases where the offender can be punished and rehabilitated outside of prison without jeopardizing the security of the society at large in their persons or property, it is appropriate and encouraged that the offender pay his debt to society through a range of punishments which are alternative to incarceration. The court should order such supervision or restrictions as deemed necessary for the offender to comply with the restitution orders. Failure to comply should result in stricter measures.

5. Work policy for offenders. It is the policy of this state that offenders should work when reasonably possible, either at jobs in the private sector to pay restitution and support their dependents, or at community service jobs that benefit the public, or at useful work while in prison or jail, or at educational or treatment endeavors as a part of a rehabilitation program. Offenders should be offered the opportunity to reduce the duration of their sentences by earning "time" credit for work endeavors in achieving vocational or educational skill levels. Prisoners who are able and do not work or who refuse to participate in treatment programs should be prohibited from enjoying privileges which may be provided to inmates beyond those required by law.

6. Responsibility of Department of Corrections. It is the goal of the Department of Corrections to provide adequate prison space to ensure that those sentenced to prison will remain incarcerated until such time as they can be safely released, or until their active sentences are completed, and to provide community-based supervision for those offenders selected for supervised probation and parole by the courts and the Pardon and Parole Board.

It is the mission of the Department to provide housing, clothing, food and medical care to its inmates, to maintain a safe and secure prison system, to keep accurate records, to offer job training, education, counseling, work and treatment programs deemed appropriate to monitor and advance the rehabilitative progress of its inmates, to provide a fair and orderly progression through custody levels, and to make data and recommendations regarding parole available to the Pardon and Parole Board. As an inmate demonstrates that he is no longer a threat to society, that the punishment has been effective and that a program of rehabilitation is showing progress, the inmate's level of custody may be commensurately reduced in an orderly progression through custody levels to parole and release from supervision.

It is the mission of the Department of Corrections to receive convicted offenders selected by the courts and the Pardon and Parole Board and to protect society through a coordinated program of community supervision which provides realistic opportunities for probationers and parolees to develop skills necessary to adjust to

free society. As a probationer or parolee demonstrates that the supervision has been effective and that a community treatment program is showing progress, the level of supervision may be commensurately reduced in an orderly progression to prepare for release from supervision.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1515 of Title 22, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Truth in Sentencing Policy Advisory Commission in performing its duties shall make recommendations consistent with the purposes and policies stated in Section 14 of this act. Section 14 of this act is only for the purpose of providing policy guidelines for the development of comprehensive criminal justice and corrections systems by the Commission.

SECTION 16. This act shall become effective July 1, 1994.

SECTION 17. 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 House of Representatives the 26th day of May, 1994.

Speaker of the House of
Representatives

Passed the Senate the 27th day of May, 1994.

President of the Senate