STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1138

By: Steidley, Bastin, Breckinridge, Ferguson, Glover, Satterfield and Perry of the House

and

Dickerson of the Senate

COMMITTEE SUBSTITUTE

(truth in sentencing - convicted persons - incarceration - amending various sections in Titles 22 and 57 - repealing 57 O.S., Sections 570, 572, 573, 574, 574.1, 575 and 576 - effective dates -

emergency)

SECTION 1. This act shall be known and may be cited as the "Truth in Sentencing Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 990a of Title 22, unless there is created a duplication in numbering, reads as follows:

A. It is hereby declared to be the policy of the State of Oklahoma that persons convicted of violations of the law should be sentenced in a manner that reflects the offense committed, safeguards society as a whole, provides justice for the victims of crime, provides an opportunity for an offender to seek rehabilitation, ensures the availability of prison space for those most in need of incarceration, and which will truthfully present the punishment actually to be exacted.

B. A person convicted of a crime and sentenced to incarceration shall be required to serve not less than eighty-five percent (85%) of the sentence received. The person shall not be eligible for earned credits, or other types of credits which have the effect of reducing the length of sentence. Any person convicted of a felony after July 1, 1996, shall be sentenced in accordance with the ranges of punishments established by the Oklahoma Truth in Sentencing Policy Advisory Commission and adopted by the Legislature.

C. At the time of sentencing the court shall consider the following factors prior to entering the sentence but shall not be required to state its findings for the record:

1. The prior criminal record of the offender, to include juvenile record, giving more weight to convictions for crimes of violence or against persons than to convictions for nonviolent property offenses;

2. Whether the victim in the present case was physically harmed;

3. The value of restitution for bodily injury or property damage to the victim in the present case;

4. Whether based on prior criminal record or bodily harm committed against the victim the sentence is subject to enhancement pursuant to subsection D of Section 991a of Title 22 of the Oklahoma Statutes;

5. Whether alternatives to incarceration provide viable alternatives for appropriate punishment of the offense, securing restitution for the victim, or successful potential to afford the person sentenced a program to rehabilitate himself;

6. The educational background and literacy, or any condition of chemical dependency, of the person being sentenced, together with sentencing options which would correct any deficiencies;

7. The attitude of the person being sentenced; and

8. The helplessness of the victim based on age, physical or mental condition, or any other circumstance that indicates helplessness.

D. The court shall be empowered to enhance a sentence imposed in accordance with the following provisions:

1. If the value of the property for any theft crime is over Two Thousand Five Hundred Dollars ($2,500.00) but less than Ten Thousand Dollars ($10,000.00), the maximum sentence range shall be increased by six (6) months. If the amount of the theft is over Ten Thousand Dollars ($10,000.00) but less than One Hundred Thousand Dollars ($100,000.00), the maximum sentence range shall be increased by eighteen (18) months. If the amount of the theft is over One Hundred Thousand Dollars ($100,000.00) but less than Five Hundred Thousand Dollars ($500,000.00), the maximum sentence range shall be increased by thirty-six (36) months. If the amount of the theft is over Five Hundred Thousand Dollars ($500,000.00), the maximum sentence range shall be increased by sixty (60) months;

2. Any person found to have used a dangerous or deadly weapon of any type during the commission of any offense not involving bodily injury shall have the maximum sentence range increased twenty-five percent (25%) unless said weapon is a necessary element for the offense on the defendant being sentenced;

3. If the person being sentenced tortured or dismembered the victim, the maximum sentence range prescribed by law shall be enhanced seventy-five percent (75%); and

4. If the victim of the offense is by virtue of age, over sixty-two (62), under twelve (12), or is disabled by reason of mental or physical illness to such extent he lacks the ability to effectively protect himself or his property, the person being sentenced shall have the minimum and maximum sentence range increased twenty-five percent (25%).

E. Every person who, having been previously convicted of any offense punishable by imprisonment in the State Penitentiary commits any crime after such conviction, is punishable thereof as follows:

1. If the prior offense is murder in the first degree or any other offense which is a Schedule I felony, the maximum and minimum range of punishment for the offense charged shall be enhanced by one hundred percent (100%);

2. If the prior offense is a Schedule II, III, IV or V felony, the maximum and minimum range of punishment for the offense charged shall be enhanced by twenty-five percent (25%);

3. If the prior offense is a Schedule VI or VII felony, the maximum and minimum range of punishment for the offense charged shall be enhanced by fifteen percent (15%); and

4. If the prior offense is a Schedule VIII, IX or X felony, the maximum and minimum range of punishment for the offense charged shall be enhanced by five percent (5%).

F. If the person has been convicted of two or more felonies which do not arise out of the same transaction or series of transactions, his punishment shall be enhanced as follows: The maximum and minimum range of punishment shall be increased by determining the highest schedule enhancement percentage from subsection E of this section and adding five percent (5%) for each additional prior felony conviction.

G. If the person has been previously convicted of two or more felonies which arose out of the same transaction or series of transactions, the maximum and minimum range of sentence for the current offense shall be determined on the range of punishment for the highest scheduled prior offense arising from that transaction as set forth in subsection E of this section.

H. No person shall be sentenced as a second and subsequent offender when a period of ten (10) years has elapsed since the date of full completion of the sentence for the most recent previous

conviction. For the purpose of this section, the date of full completion of the sentence set forth herein shall begin to run on the first day following the expiration of the original sentence imposed as though said sentence had been served in full, and no methods of sentence reduction shall apply towards calculating this time period.

I. If the person charged is bound over for trial, the state shall, on or before the date of arraignment, file a notice of specific acts or prior convictions upon which the state will rely at sentencing for enhancement of punishment.

J. The enhancements provided by this section are cumulative and shall operate to increase the maximum sentence range prescribed by statute and the court is empowered to sentence an offender whose sentence is enhanced pursuant to these provisions in accordance with the provisions of Section 991a of Title 22 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 857, is amended to read as follows:

Section 857. After hearing the charge, the jury may either decide in court, or may retire for deliberation. <u>The jury shall determine only guilt or innocence, except when the trial is for the offense of first degree murder.</u> If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 860, is amended to read as follows:

Section 860. In all cases in which the defendant is prosecuted for a second or subsequent offense, except in those cases in which

former conviction is an element of the offense, the procedure shall be as follows:

~~(a)~~ The trial shall proceed initially as though the offense charged was the first offense; when the indictment or information is read all reference to prior offenses shall be omitted; during the trial of the case no reference shall be made nor evidence received of prior offenses except as permitted by the rules of evidence; the judge shall instruct the jury only on the offense charged; the jury shall be further instructed to determine only the guilt or innocence on the offense charged, and that punishment at this time shall not be determined by the jury.

~~(b) If the verdict be guilty of the offense charged, that portion of the indictment or information relating to prior offenses shall be read to the jury and evidence of prior offenses shall be received. The court shall then instruct the jury on the law relating to second and subsequent offenses, and the jury shall then retire to determine (1) the fact of former conviction, and (2) the punishment, as in other cases.~~

SECTION 5. AMENDATORY 22 O.S. 1991, Section 982, as amended by Section 1, Chapter 319, O.S.L. 1992 (22 O.S. Supp. 1994, Section 982), is amended to read as follows:

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

B. The Department shall inquire into the circumstances of the offense. This information shall include the voluntary statement of the victim concerning the offense, the amount of the loss of the

victim, and the criminal record, social history and present condition of the convicted person. The Department shall make a report of such investigation to the court, including ~~a recommendation as to appropriate sentence, and specifically a recommendation for or against probation~~ the mean, median, and modal sentence given for each offense. Such reports must be presented to the judge so requesting, within a reasonable time, and upon the failure to so present the same, the judge may proceed with sentencing. Whenever, in the opinion of the court or the Department, it is desirable, the investigation shall include a physical and mental examination of the convicted person.

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

D. If the district attorney and the defendant desire to waive such presentence investigation and report, both shall execute a suitable waiver subject to approval of the court~~, whereupon the~~. The judge ~~shall~~ may proceed with the sentencing, or at the discretion of the court, direct a presentence investigation and report prior to sentencing.

E. The order of the court directing a presentence investigation shall be in the following form:

IN THE DISTRICT COURT IN AND FOR _____ COUNTY

STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,	)	No. CRF_____
Plaintiff,	)	CRF_____
vs.	)	CRF_____
_____,	)	CRF_____
Defendant.	)	

ORDER TO CONDUCT PRESENTENCE INVESTIGATION

This matter set for hearing this _____ day of _____, ____. The Department of Corrections, Division of Community Services, Probation and Parole is hereby ordered to conduct a presentence investigation and to include in their report information from the subject matter indicated below.

All parties receiving this order are hereby ordered by this Court to permit the Department of Corrections, Division of Community Services, Probation and Parole, or its authorized representative, to examine and make copies of any and all records of the defendant, for the purpose of the presentence investigation.

I. Offense, official version:

(1) Was violence or threat of violence used? If so, nature, instrumentality employed, the injuries, if any, inflicted on victim.

a. Extent

b. Prognosis for recovery

c. Did same result in monetary loss

(2) The offender's role

a. Leader in multiple offender situations

b. Active participant in multiple offender situations

c. Minor or peripheral role in multiple offender situations

d. Alone

(3) Did offender exploit victim's vulnerability, including but not limited to:

a. Physical or mental disability

b. Age of victim

c. Disparity in size or strength

d. Abuse of authority status

e. Was victim intoxicated or under influence of drugs?

f. Asleep or unconscious?

g. Physical restraint (e.g. binding with rope, handcuffs, etc.)

(4) Was offender under influence of intoxicants or drugs?

(5) Was victim carried away or held captive beyond that which was necessary to commit the offense?

(6) Monetary value of loss to victim

a. Was property recovered, if so, was value changed?

b. Has restitution been made?

c. Cost to repair or replace

(7) Did offender stand to reap financial gain? If so, how much, actual or potential?

II. Offense, Defendant's Version:

(1) Defendant's response to all parts of official version

(2) Alleged provocation, justification or excuse

(3) Was defendant under influence of intoxicants or drugs?

(4) Past relationship of defendant and victim

(5) Effect of conviction and sentence on defendant

Investigation and Report to be made on following items checked (X)

III. Family Background and Social History ( )

IV. Marital History ( )

V. Education ( )

VI. Religious Background and Support Structures ( )

VII. Mental Health History ( )

VIII. Physical Health History ( )

IX. Financial Condition ( )

X. Prior Record, Adult[include prior convictions separately for crimes with weapon or bodily harm or threat of bodily harm] ( )

XI. Prior Record, Juvenile [include prior convictions separately for crimes with weapon or bodily harm or threat of bodily harm] ( )

XII. Traffic Record ( )

XIII. Residence ( )

XIV. Leisure Time Activities ( )

XV. Military Service Record ( )

XVI. Employment ( )

XVII. Resources ( )

XVIII. Plans ( )

XIX. Mean/Median/Average Sentence ( )

XX. Percentage of similar cases given probation in whole or part ( )

The report of the Department of Corrections, Division of Community Services, Probation and Parole is to be sent to this Court on or before the _____ day of _____, _____.

_____

DISTRICT JUDGE

SENTENCING DATE: _____ AT _____ AM PM

SECTION 6. AMENDATORY 22 O.S. 1991, Section 991a-2, is amended to read as follows:

Section 991a-2. A. Any person who has been convicted of a nonviolent felony in the state may be sentenced, at the discretion of the judge, to incarceration in the county jail for a period of one or more nights or weekends with the remaining portion of each week being spent under probation, in lieu of any other kind of imprisonment prescribed by law for the particular felony. Any

person incarcerated in the county jail may be assigned work duties as may be approved by the judge. The sentencing court may require a person incarcerated pursuant to this act to pay the county, for food and maintenance for each day of incarceration, an amount equal to the maximum amount prescribed by law to be paid by the county to the sheriff for such expenses. If the judge does not so order, the Department of Corrections shall reimburse the county for the cost of feeding and care of the person during such periods of incarceration. The Department of Corrections shall reimburse the county for the actual costs paid for any emergency medical care for physical injury or illness of a person incarcerated hereunder 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. For the purposes of this section, weekend incarceration shall commence at 6 p.m. on Friday and continue until 8 a.m. on the following Monday, and incarceration overnight shall commence at 6 p.m. on one day and continue until 8 a.m. of the next day. Provided, that the sentencing judge may modify said times if the circumstances of the particular case require such action. Persons who have been sentenced to incarceration in the county jail under the provisions of this section will not have to be processed through the Lexington Assessment and Reception Center prior to incarceration, provided the sheriff of the county where the person is incarcerated shall transmit to the Department of Corrections complete intake data information, on the form(s) provided by the Department of Corrections, which shall contain a photograph and fingerprint card, within twenty (20) days of the date the person is incarcerated.

B. When a court enters a sentence in any criminal case in this state, the sentence shall be imposed pursuant to the uniform judgment and sentence form, as follows:

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)

	)	
Plaintiff,	)	No.: _____
vs.	)	DOB: _____
_____,	)	SSNo.: _____
Defendant.	)	

JUDGMENT AND SENTENCE

Now, on this _____ day of _____, ____, this matter comes on before the undersigned Judge, for sentencing and the defendant, _____, appears personally and by Attorney _____ (Retained/Appointed/Public Defender), the State of Oklahoma represented by _____, and the defendant, having previously either:

( ) Entered negotiated plea of guilty

( ) Entered a Blind Plea

( ) Found guilty by jury

to/of the crime(s) of:		Offense Statute
Count 1:	_____	____ O.S. ___
Count 2:	_____	____ O.S. ___
Count 3:	_____	____ O.S. ___
Count 4:	_____	____ O.S. ___
Count 5:	_____	____ O.S. ___

( ) The Court finds the defendant has prior felony convictions and this sentence has been enhanced in accordance with the provisions set forth in _____ O.S. ____, and,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Defendant, _____, is guilty of the above described offenses and is sentenced as follows:

- (TIME TO DO) -

( ) Count 1: Sentenced to a term of ____ months imprisonment;

( ) Count 2: Sentenced to a term of ____ months imprisonment;

( ) Count 3: Sentenced to a term of ____ months imprisonment;

( ) Count 4: Sentenced to a term of ____ months imprisonment;

( ) Count 5: Sentenced to a term of ____ months imprisonment;

all under custody and control of: ( ) Oklahoma Department of Corrections, or ( ) the _____ County Sheriff.

These terms to be served: ( ) concurrently, or ( ) consecutively.

- (TIME TO DO WITH PART SUSPENDED) -

( ) Count 1: Sentenced to a term of ____ months/days imprisonment;

( ) Count 2: Sentenced to a term of ____ months/days imprisonment;

( ) Count 3: Sentenced to a term of ____ months/days imprisonment;

( ) Count 4: Sentenced to a term of ____ months/days imprisonment;

( ) Count 5: Sentenced to a term of ____ months/days imprisonment;

with all except the first ____ months/days suspended under the custody and control of: the ( ) Oklahoma Department of Corrections, or ( ) the _____ County Sheriff.

These terms to be served: ( ) concurrently, or ( ) consecutively.

- (NO TIME TO DO - ALL SUSPENDED) -

( ) Count 1: Sentenced to a term of ____ months/days imprisonment;

( ) Count 2: Sentenced to a term of ____ months/days imprisonment;

( ) Count 3: Sentenced to a term of ____ months/days imprisonment;

( ) Count 4: Sentenced to a term of ____ months/days imprisonment;

( ) Count 5: Sentenced to a term of ____ months/days imprisonment;

under the custody and control of: the ( ) Oklahoma Department of Corrections, or ( ) the _____ County Sheriff, all of said terms of imprisonment suspended.

These terms to be served: ( ) concurrently, or ( ) consecutively.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that in addition to the preceding terms, the Defendant is also sentenced to:

- (FINE) -

( ) The defendant shall pay a fine $_____ on or before _____, 19__, at the rate of $_____ per _____.

( ) No fine is required.

( ) The payment of a fine of $_____ is SUSPENDED.

- (COSTS, VCA, RESTITUTION) -

( ) The defendant shall pay costs and/or fees of $_____ on or before _____, ____, at the rate of $_____ per _____.

( ) The defendant shall NOT pay costs and/or fees.

( ) The defendant shall pay Victim's Compensation Assessment of $_____: ( ) on or before _____, ____; ( ) within __ months after release.

( ) The defendant shall NOT pay Victim's Compensation Assessment.

( ) The defendant shall pay restitution of $_____ on or before _____, ____, at the rate of _____ per _____.

( ) No restitution is required.

( ) (Other) _____

It is further ordered that judgment is hereby entered against the Defendant as to the fines, costs and assessments set forth above.

The Court further advised the Defendant of h__ rights to appeal to the Court of Criminal Appeals of the State of Oklahoma, and of the necessary steps to be taken by h__ to perfect such appeal, and that if h__ desired to appeal and was unable to afford counsel and a

transcript of the proceedings, that the same would be furnished by the state without cost to h__.

In the event the above sentence is for incarceration in the Department of Corrections, the sheriff of _____ County, Oklahoma, is ordered and directed to deliver the Defendant to the Lexington Assessment and Reception Center at Lexington, Oklahoma, and leave therewith a copy of this Judgment and Sentence to serve as warrant and authority for the imprisonment of the Defendant as provided herein. A second copy of this Judgment and Sentence to be warrant and authority of said sheriff for the transportation and imprisonment of the Defendant as herein before provided. The sheriff to make due return to the clerk of this Court, with his proceedings endorsed thereon.

Witness my hand the day and year first above mentioned.

_____

JUDGE OF THE DISTRICT COURT

(SEAL)

ATTEST: _____ Court Clerk

_____ Deputy Court Clerk

CLERK'S CERTIFICATION OF COPIES

I, _____, Clerk of the District Court of _____ County, State of Oklahoma, do hereby certify the foregoing to be true, correct, full and complete copy of the original Judgment and Sentence in the case of The State of Oklahoma vs. _____ as the same appears of record in my office.

WITNESS my hand and official seal this _____ day of _____, ____.

(SEAL)

_____

Court Clerk

By

_____

Deputy Court Clerk

SHERIFF'S RETURN

I received this Judgment and Sentence the __ day of _____, ____, and executed it by delivering the Defendant to the Warden of the Lexington Assessment and Reception Center at Lexington, Oklahoma, on the _____ day of _____, ____. I also certify the above prisoner has served ____ days in the County Jail on the present charge or charges.

_____

Sheriff

_____

Deputy Sheriff

ADDITIONAL FINDINGS OF COURT

1. Were other charges/counts dismissed/not filed by the District Attorney as a part of this finding of guilt? Yes ( ) No ( ). If yes, identify:

_____

2. Were prior convictions dismissed/not alleged as a part of the prosecution process? Yes ( ) No ( ). If yes, identify and list all known prior felony convictions by date, offense, jurisdiction, case number, and disposition:

_____

_____

3. Were charges consolidated with charges from other counties/jurisdictions as a part of adjudication? Yes ( ) No ( ). If yes, identify:

_____

4. Was a weapon used in the commission of this offense?

Yes ( ) No ( ). If yes, identify:

_____

5. The offender's role was:

primary actor ( ); active participant ( ); follower ( )

6. Was victim physically harmed? Yes ( ) No ( ).

If yes, identify: _____

7. Was victim elderly, incapacitated, or minor?

Yes ( ) No ( ). If yes, identify:

_____

8. Was Defendant under influence of alcohol or other drugs at time offense committed? Yes ( ) No ( ).

If yes, identify: _____

9. Were enhancers utilized in determining sentence?

Yes ( ) No ( ). If yes, identify: _____

10. Age, marital status, race and sex of offender:

_____

11. Education of Offender: _____

12. Can offender read and write? Yes ( ) No ( ).

Explain: _____

13. Was victim consulted regarding any plea agreements?

Yes ( ) No ( ).

SECTION 7. AMENDATORY 57 O.S. 1991, Section 95, is amended to read as follows:

Section 95. Any person convicted of an offense against the laws of this state and sentenced to imprisonment that is not to be served in a county jail shall be transported by the sheriff of the county where said person is sentenced, or the designated representative of the sheriff, to the Lexington Assessment and Reception Center. The sheriff shall deliver such person together with a certified copy of the judgment and sentence of the court ordering such imprisonment

and a certificate setting forth the number of days served in the county jail after the pronouncement of judgment and rendering of sentence for the offenses committed to the Department of Corrections at such center and the Department shall give the sheriff a receipt for each prisoner received. The receipt shall be filed by the sheriff in the office of the clerk of the court where the sentence was made.

SECTION 8. AMENDATORY 57 O.S. 1991, Section 138, as last amended by Section 6, Chapter 360, O.S.L. 1993 (57 O.S. Supp. 1994, Section 138), is amended to read as follows:

Section 138. A. All persons convicted of crimes committed on or after July 1, 1996, whether their sentences are for incarceration, in whole or in part, or are for probation which is subsequently revoked, shall not be eligible for earned credits.

B. Except as otherwise provided by law, every inmate of a state correctional institution who was convicted of a crime committed prior to July 1, 1996, shall have their term of imprisonment reduced monthly, based upon the class level to which they are assigned. Earned credits may be subtracted from the total credits accumulated by an inmate, upon recommendation of the institution's disciplinary committee, following due process, and upon approval of the warden or superintendent. Each earned credit is equivalent to one (1) day of incarceration. Lost credits may be restored by the warden or superintendent upon approval of the classification committee. If a maximum and minimum term of imprisonment is imposed, the provisions of this subsection shall apply only to the maximum term. No deductions shall be credited to any inmate serving a sentence of life imprisonment; however, a complete record of the inmate's participation in work, school, vocational training, or other approved program shall be maintained by the Department for consideration by the paroling authority.

~~B.~~ C. The Department of Corrections is directed to develop a written policy and procedure whereby inmates shall be assigned to one (1) of four (4) class levels determined by an adjustment review committee of the facility to which the inmate is assigned. The policies and procedures developed by the Department shall include, but not be limited to, written guidelines pertaining to awarding credits for rehabilitation, obtaining job skills and educational enhancement, participation in and completion of alcohol/chemical abuse programs, incentives for inmates to accept work assignments and jobs, work attendance and productivity, conduct record, participation in programs, cooperative general behavior, and appearance. When assigning inmates to a class level the adjustment review committee shall consider all aspects of the policy and procedure developed by the Department, including but not limited to, the criteria for awarding credits required by this subsection.

~~C.~~ D. If an inmate who has been assessed to be capable of benefiting from education programs refuses assignment to an education program, the inmate shall remain in class level 1 until such time as the inmate accepts an educational assignment.

~~D.~~ E. 1. Class levels shall be as follows:

a. Class level 1 shall include inmates not eligible to participate in class levels 2 through 4, and shall include, but not be limited to, inmates on escape status, inmates refusing job, education, or program assignments, inmates removed from job, education, or program assignments due to misconduct or nonperformance, or inmates subject to disciplinary action.

b. Class level 2 shall include an inmate who has been given a work, education, or program assignment, has received a good evaluation for participation in the work, education, or program assignment, and has

received a good evaluation for personal hygiene and maintenance of living area.

c. Class level 3 shall include an inmate who has been incarcerated at least four (4) months, has received an excellent work, education, or program evaluation, and has received an excellent evaluation for personal hygiene and maintenance of living area.

d. Class level 4 shall include an inmate who has been incarcerated at least ten (10) months, has received an outstanding work, education, or program evaluation, and has received an outstanding evaluation for personal hygiene and maintenance of living area.

2. Class level corresponding credits <u>for inmates who were sentenced for crimes committed prior to July 1, 1996,</u> are as follows:

Class 1 - 0 Credits per month;

Class 2 - 22 Credits per month;

Class 3 - 33 Credits per month;

Class 4 - 44 Credits per month.

Each inmate shall receive the above specified monthly credits for the class to which he is assigned.

3. In addition to the criteria established for each class in paragraph 1 of this subsection, the following requirements shall apply to each of levels 2 through 4:

a. satisfactory participation in the work, education, or program assignment at the standard required for the particular class level;

b. maintenance of a clean and orderly living area and personal hygiene at the standard required for the particular class level;

c. cooperative behavior toward facility staff and other inmates;

d. satisfactory participation in the requirements of the previous class level.

4. The evaluation scale for assessing performance shall be as follows:

a. Outstanding - For inmates who display consistently exceptional initiative, motivation, and work habits.

b. Excellent - For inmates who display above-average work habits with only minor errors and rarely perform below expectations.

c. Good - For inmates who perform in a satisfactory manner and complete tasks as required, doing what is expected, with only occasional performance above or below expectations.

d. Fair - For inmates who may perform satisfactorily for some periods of time, but whose performance is marked by obviously deficient and weak areas and could be improved.

e. Poor - For inmates whose performance is unsatisfactory and falls below expected and acceptable standards.

~~E.~~ F. The policy and procedure developed by the Department of Corrections shall include provisions for adjustment review committees of not less than three (3) members for each such committee. Each committee shall consist of a classification team supervisor who shall act as chairman, the case manager for the inmate being reviewed or classified, a correctional officer or inmate counselor, and not more than two other members, if deemed necessary, determined pursuant to policy and procedure to be appropriate for the specific adjustment review committee or committees to which they are assigned. At least once every four (4) months the adjustment review committee for each inmate shall evaluate the class level status and performance of the inmate and

determine whether or not the class level for the inmate should be changed.

Any inmate who feels aggrieved by a decision made by an adjustment review committee may utilize normal grievance procedures in effect with the Department of Corrections and in effect at the facility in which the inmate is incarcerated.

~~F.~~ G. Inmates granted medical leaves for treatment that cannot be furnished at the penal institution where incarcerated shall be allowed the time spent on medical leave as time served. Any inmate classified by the Department of Corrections as being physically or mentally disabled for work or placed into administrative segregation for nondisciplinary reasons by the institution's administration may be placed in Class 2. The length of any jail term served by an inmate before being transported to a state correctional institution pursuant to a judgment and sentence of incarceration shall be deducted from his term of imprisonment at the state correctional institution. Inmates sentenced to the Department of Corrections and detained in a county jail as a result of the Department's reception scheduling procedure shall be awarded earned credits as provided for in subparagraph b of paragraph 1 of subsection D of this section, beginning on the date of the judgment and sentence, unless the inmate is convicted of a misdemeanor or felony committed in the jail while the inmate is awaiting transport to the Lexington Assessment and Reception Center.

~~G. Additional~~ H. For inmates who were sentenced for crimes committed prior to July 1, 1996, additional achievement earned credits for successful completion of departmentally approved programs or for attaining goals or standards set by the Department shall be awarded as follows:

High School Diploma or Equivalent General Education Diploma 90 credits;

Certification of Completion of Vocational Training 80 credits;

Successful completion of Alcohol/Chemical Abuse Treatment Program of not less than four (4) months continuous participation 70 credits;

Successful completion of other Educational Accomplishments or other programs not specified in this subsection 10 - 30 credits;

Achievement earned credits are subject to loss and restoration in the same manner as earned credits. No inmate shall receive more than ninety (90) achievement credits per calendar year.

~~H.~~ I. The accumulated time of every inmate shall be tallied monthly and maintained by the institution where the term of imprisonment is being served. A record of said accumulated time shall be:

1. Sent to the administrative office of the Department of Corrections on a quarterly basis; and

2. Provided to the inmate.

~~I.~~ J. As of ~~the effective date of this act~~ November 1, 1988, all inmates ~~currently~~ under the custody of the Department of Corrections shall receive their assignments and all credits from that date forward shall be calculated pursuant to this ~~act~~ section.

SECTION 9. AMENDATORY 57 O.S. 1991, Section 332, is amended to read as follows:

Section 332. The Governor shall have power to grant, after conviction, reprieves, commutations, paroles and pardons for all offenses, except cases of impeachment, upon such conditions and such restrictions and limitations as ~~he~~ may ~~deem~~ be deemed proper by the Governor, subject, however, to the regulations ~~hereinbefore~~ prescribed by the Legislature and the provisions of Section 10 of Article VI of the Oklahoma Constitution.

SECTION 10. AMENDATORY 57 O.S. 1991, Section 332.7, as amended by Section 1, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1994, Section 332.7), is amended to read as follows:

Section 332.7 A. Upon completion of ~~one-third (1/3)~~ eighty-five percent (85%) of the sentence of any person in the 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 to cause an examination to be made at the penal institution where the person is assigned, and to make inquiry into the conduct and the record of the said person during his 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)~~ eighty-five percent (85%) 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,~~ a felony 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~~ at least eighty-five percent (85%) of the sentence imposed.

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 11. AMENDATORY 57 O.S. 1991, Section 365, as amended by Section 7, Chapter 125, O.S.L. 1993 (57 O.S. Supp. 1994, 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. The provisions of this section shall not apply to any person sentenced for a crime committed on or after July 1, 1996, and such person shall not be committed to the Preparole Conditional Supervision Program.

SECTION 12. AMENDATORY 57 O.S. 1991, Section 571, as amended by Section 10, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1994, Section 571), is amended to read as follows:

Section 571. As used in ~~this act:~~

~~1. "Capacity" means the actual available bedspace as certified by the State Board of Corrections subject to applicable federal and state laws and the rules and regulations promulgated under such laws;~~

~~2. "Department" means the Department of Corrections of the State of Oklahoma;~~

~~3. "Director" means the Director of the Department of Corrections;~~

~~4. "Emergency time credit" means time reduction of sentence allowed when ninety-five percent (95%) of capacity is exceeded pursuant to this act; and~~

~~5. "Nonviolent"~~ the Oklahoma Statutes, unless otherwise provided, "nonviolent offense" means any felony offense except the following, or any attempts to commit or conspiracy or solicitation to commit the following crimes:

~~a. assault~~ 1. Assault, battery, or assault and battery with a dangerous weapon;

~~b. aggravated~~ 2. Aggravated assault and battery on a police officer, sheriff, highway patrolman, or any other officer of the law;

~~c. poisoning~~ 3. Poisoning with intent to kill;

~~d. shooting~~ 4. Shooting with intent to kill;

~~e. assault~~ 5. Assault with intent to kill;

~~f. assault~~ 6. Assault with intent to commit a felony;

~~g. assaults~~ 7. Assaults while masked or disguised;

~~h. murder~~ 8. Murder in the first degree;

~~i. murder~~ 9. Murder in the second degree;

~~j. manslaughter~~ 10. Manslaughter in the first degree;

~~k. manslaughter~~ 11. Manslaughter in the second degree;

~~l. kidnapping~~ 12. Kidnapping;

~~m. burglary~~ 13. Burglary in the first degree;

~~n. burglary~~ 14. Burglary with explosives;

~~o. kidnapping~~ 15. Kidnapping for extortion;

~~p. maiming~~ 16. Maiming;

~~q. robbery~~ 17. Robbery;

~~r. robbery~~ 18. Robbery in the first degree;

~~s. robbery~~ 19. Robbery in the second degree;

~~t. armed~~ 20. Armed robbery;

~~u. robbery~~ 21. Robbery by two (2) or more persons;

~~v. robbery~~ 22. Robbery with dangerous weapon or imitation firearm;

~~w. child~~ 23. Child beating;

~~x. wiring~~ 24. Wiring any equipment, vehicle or structure with explosives;

~~y. forcible~~ 25. Forcible sodomy;

~~z. rape~~ 26. Rape in the first degree;

~~aa. rape~~ 27. Rape in the second degree;

~~bb. rape~~ 28. Rape by instrumentation;

~~cc. lewd~~ 29. Lewd or indecent proposition or lewd or indecent act with a child;

~~dd. use~~ 30. Use of a firearm or offensive weapon to commit or attempt to commit a felony;

~~ee. pointing~~ 31. Pointing firearms;

~~ff. rioting~~ 32. Rioting;

~~gg. inciting~~ 33. Inciting to riot;

~~hh. arson~~ 34. Arson in the first degree;

~~ii. injuring~~ 35. Injuring or burning public buildings;

~~jj. sabotage~~ 36. Sabotage;

~~kk. criminal~~ 37. Criminal syndicalism;

~~ll. extortion~~ 38. Extortion;

~~mm. obtaining~~ 39. Obtaining signature by extortion;

~~nn. seizure~~ 40. Seizure of a bus, discharging firearm or hurling missile at bus; or

~~oo. mistreatment~~ 41. Mistreatment of a mental patient.

SECTION 13. REPEALER 57 O.S. 1991, Sections 570, 572, 573, 574, 574.1, as amended by Section 11, Chapter 276, O.S.L. 1993, 575 and 576 (57 O.S. Supp. 1994, Section 574.1), shall be repealed January 1, 2001, to give the Oklahoma Legislature the opportunity to provide adequate facilities and programs to meet the mandates of the Oklahoma Truth in Sentencing Act.

SECTION 14. Section 1 of this act shall not be codified in the Oklahoma Statutes.

SECTION 15. Section 1 and Sections 5 through 11 of this act shall become effective July 1, 1995.

SECTION 16. Sections 2, 3 and 4 of this act shall become effective July 1, 1996.

SECTION 17. Sections 12 and 13 shall become effective January 1, 2001.

SECTION 18. 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.

45-1-1054 PWA