

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1138

By: Steidley and Bastin

AS INTRODUCED

An Act relating to truth in sentencing; providing short title; declaring policy; requiring convicted persons sentenced to incarceration to serve certain percent of sentence; limiting eligibility for earned credits; requiring sentencing of certain felons in accordance with specified schedules of punishment; requiring sentencing court to consider certain factors; providing for enhancement of sentences in certain circumstances; providing that certain persons shall not be sentenced as second and subsequent offenders; specifying date of full completion of sentence; providing for filing of certain notice; making enhancements cumulative; amending 22 O.S. 1991, Sections 857, 860, 982, as amended by Section 1, Chapter 319, O.S.L. 1992, 991a, as last amended by Section 1, Chapter 308, O.S.L. 1994 and 991a-2 (22 O.S. Supp. 1994, Sections 982 and 991a), which relate to criminal procedure; providing that juries shall determine only guilt or innocence, with exception; modifying procedure for persons prosecuted for second or subsequent offense; providing certain judicial discretion relating to sentencing; providing for court orders directing presentence investigations;

providing form; modifying sentencing powers of the court; authorizing the court to enter certain order if defendant fails to pay restitution; providing for the transmission of inmate data information within a certain time; providing a uniform judgment and sentence form; amending 57 O.S. 1991, Sections 95, 138, as last amended by Section 6, Chapter 360, O.S.L. 1993, 332, 332.7, as amended by Section 1, Chapter 276, O.S.L. 1993, and 365, as amended by Section 7, Chapter 125, O.S.L. 1993 (57 O.S. Supp. 1994, Sections 138, 332.7 and 365), which relate to prisons and reformatories; requiring notification to Department of Corrections of time inmate serves in county jail after pronouncement of judgment and sentence; modifying earned credits for certain inmates; limiting authority of Governor; modifying time to be served for parole eligibility; removing duplicate language concerning parole recommendations; excluding certain persons from eligibility for Preparole Conditional Supervision; amending 57 O.S. 1991, Section 571, as amended by Section 10, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1994, Section 571), which relates to definitions for the Oklahoma Prison Overcrowding Emergency Powers Act; eliminating certain definitions relating to said act; providing scope of certain definition; repealing 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), which relate to the Oklahoma Prison Overcrowding Emergency Powers Act, on a certain date; providing for codification;

providing for noncodification; providing effective dates; and declaring an emergency.

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

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 adequately reflects the offense committed, reasonably safeguards society as a whole, provides a measure of substantial justice for the victims of crime, provides an opportunity for an offender to seek rehabilitation, assures 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 sixty-five percent (65%) 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, in excess of twenty percent (20%) of the sentence being served. 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. The jury shall determine only guilt or innocence, except when the trial is for the offense of first degree murder. 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, as last amended by Section 1, Chapter 308, O.S.L. 1994 (22 O.S. Supp. 1994, Section 991a), is amended to read as follows:

Section 991a. A. Except as otherwise provided in the Elderly and Incapacitated Victims Protection Program, Section 991a-5 et seq. of this title, when a defendant is convicted of a crime and no death sentence is imposed, the court shall either:

1. Suspend the execution of sentence in whole or in part, with or without probation. The court, in addition, may order the convicted defendant at the time of sentencing or at any time during the suspended sentence to do one or more of the following as a condition of the suspended sentence:

- a. to provide restitution to the victim according to a schedule of payments established by the sentencing court, together with interest upon any pecuniary sum at the rate of twelve percent (12%) per annum, if ~~the defendant agrees to pay such restitution or,~~ in the opinion of the court, ~~if he~~ the defendant is able to pay such restitution without imposing manifest

- hardship on the defendant or ~~his~~ the immediate family of the defendant and if the extent of the damage to the victim is determinable with reasonable certainty,
- b. to reimburse any state agency for amounts paid by the state agency for hospital and medical expenses incurred by the victim or victims, as a result of the criminal act for which such person was convicted, which reimbursement shall be made directly to the state agency, with interest accruing thereon at the rate of twelve percent (12%) per annum,
 - c. to engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the person convicted,
 - d. to pay a reasonable sum into any trust fund, established pursuant to the provisions of Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes, and which provides restitution payments by convicted defendants to victims of crimes committed within the State of Oklahoma wherein such victim has incurred a financial loss,
 - e. to confinement in the county jail for a period not to exceed six (6) months,
 - f. to reimburse the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which he is being sentenced, ~~or~~
 - g. to engage in any other program the court deems necessary to facilitate rehabilitation,
 - h. to prescribe additional reasonable rules or probation as the court deems necessary to ensure the successful completion of the probation period, or

i. to repay the reward or part of the reward paid by a certified local crimestoppers program and the Oklahoma Reward System. In determining whether the defendant shall repay the reward or part of the reward, the court shall consider the ability of the defendant to make the payment, the financial hardship on the defendant to make the required payment, and the importance of the information to the prosecution of the defendant as provided by the arresting officer or the district attorney with due regard for the confidentiality of the records of the certified local crimestoppers program and the Oklahoma Reward System. The court shall assess this repayment against the defendant as a cost of prosecution. "Certified local crimestoppers program" means a crimestoppers program certified by the Office of the Attorney General pursuant to Section 991g of this title. The "Oklahoma General Reward System" means the reward program established by Section 150.18 of Title 74 of the Oklahoma Statutes.

However, any such order for restitution, community service, payment to a certified local crimestoppers program, payment to the Oklahoma Reward System, or confinement in the county jail, or a combination thereof, shall be made in conjunction with probation and shall be made a condition of the suspended sentence;

2. Impose a fine prescribed by law for the offense, with or without any of the following:

- a. probation or commitment ~~and with or without,~~
- b. restitution or service as provided for in this section, Section 991a-4 of this title or Section 227 of Title 57 of the Oklahoma Statutes,

c. reimbursement to the court fund for amounts paid to court-appointed attorneys and expert witnesses for representing the defendant in the case in which the defendant is being sentenced;

3. Commit such person for confinement provided for by law with or without any of the following:

a. restitution as provided for in this section,
b. reimbursement to the court fund for amounts paid to court-appointed attorneys and expert witnesses for representing the defendant in the case in which the defendant is being sentenced;

4. In the case of nonviolent felony offenses, sentence such person to the Community Service Sentencing Program created pursuant to Section 991a-4 of this title;

5. In addition to the other sentencing powers of the court, in the case of a person convicted of operating or being in control of a motor vehicle while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol or another intoxicating substance, or convicted of operating a motor vehicle while the ability of the person to operate such vehicle was impaired due to the consumption of alcohol, require such person:

a. to participate in an alcohol and drug substance abuse course or treatment program, pursuant to Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes,
b. to attend a victims impact panel program, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not less than Five Dollars (\$5.00) nor more than Fifteen Dollars (\$15.00) as set by the governing authority of the program and approved by the court, to the program to offset the cost of participation by the defendant, if in the opinion of

the court the defendant has the ability to pay such fee,

- c. to both participate in the alcohol and drug substance abuse course or treatment program, pursuant to subparagraph a of this paragraph and attend a victims impact panel program, pursuant to subparagraph b of this paragraph,
- d. to install an ignition interlock device, at the person's own expense, approved by the Department of Public Safety, upon every motor vehicle operated by such person and to require that a notation of this restriction be affixed to the person's driver's license at the time of reinstatement of the license. Said restriction shall remain on the driver's license for such period as the court shall determine. The restriction may be modified or removed by order of the court and notice of said order shall be given to the Department of Public Safety. Upon the expiration of the period for the restriction, the Department of Public Safety shall remove the restriction without further court order. Failure to comply with the order to install an ignition interlock device or operating any vehicle without such device during the period of restriction shall be a violation of the sentence and may be punished as deemed proper by the sentencing court, or
- e. beginning January 1, 1993, to submit to electronically monitored home detention administered and supervised by the Department of Corrections, and to pay to the Department a monitoring fee, not to exceed Seventy-five Dollars (\$75.00) a month, to the Department of Corrections, if in the opinion of the court the

defendant has the ability to pay such fee. Any fees collected pursuant to this subparagraph shall be deposited in the Department of Corrections Revolving Fund. Any order by the court for the payment of the monitoring fee, if willfully disobeyed, may be enforced as an indirect contempt of court;

6. In addition to the other sentencing powers of the court, in the case of a person convicted of prostitution pursuant to Section 1029 of Title 21 of the Oklahoma Statutes, require such person to receive counseling for the behavior which may have caused such person to engage in prostitution activities. Such person may be required to receive counseling in areas including but not limited to alcohol and substance abuse, sexual behavior problems, or domestic abuse or child abuse problems;

7. In addition to the other sentencing powers of the court, in the case of a person convicted of any crime related to domestic abuse, as defined in Section 60.1 of this title, the court may require the defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim. The defendant may be required to pay all or part of the cost of the treatment or counseling services; or

8. In addition to the other sentencing powers of the court, the court, in the case of a sex offender, shall require the person to participate in a treatment program designed specifically for the treatment of sex offenders, if available. The treatment program must be approved by the probation officer who has supervisory authority over the defendant if the defendant is placed on probation, or the court if the court retains supervisory authority over the defendant. Such treatment shall be at the expense of the defendant based on the defendant's ability to pay.

Provided, for the purposes of this section, the term "sex offense" shall not include a violation of paragraph 1 of subsection A of Section 1021 of Title 21 of the Oklahoma Statutes.

B. Notwithstanding any other provision of law, any person who is found guilty of a violation of any provision of Section 761 or 11-902 of Title 47 of the Oklahoma Statutes or any person pleading guilty or nolo contendere for a violation of any provision of such sections shall be ordered to participate in, prior to sentencing, an alcohol and drug substance abuse evaluation program offered by a facility or qualified practitioner certified by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the facility or qualified practitioner for the evaluation. The Department of Mental Health and Substance Abuse Services shall establish a fee schedule, based upon a person's ability to pay, provided the fee for an evaluation shall not exceed Seventy-five Dollars (\$75.00). The evaluation shall be conducted at a certified facility, the office of a qualified practitioner or at another location as ordered by the court. The facility or qualified practitioner shall, within seventy-two (72) hours from the time the person is assessed, submit a written report to the court for the purpose of assisting the court in its final sentencing determination. No person, agency or facility operating an alcohol and drug substance abuse evaluation program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated pursuant to this subsection for any treatment program or alcohol and drug substance abuse service in which such person, agency or facility has a vested interest; however, this provision shall not be construed to prohibit the court from ordering participation in or any person from voluntarily utilizing a treatment program or alcohol and drug substance abuse service offered by such person, agency or facility.

If a person is sentenced to the custody of the Department of Corrections and the court has received a written evaluation report pursuant to this subsection, the report shall be furnished to the Department of Corrections with the judgment and sentence. Any evaluation report submitted to the court pursuant to this subsection shall be handled in a manner which will keep such report confidential from the general public's review. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence in the event the defendant fails or refuses to comply with an order of the court to obtain the evaluation required by this subsection.

As used in this subsection, "qualified practitioner" means a person with at least a bachelor's degree in substance abuse treatment, mental health or a related health care field and at least two (2) years' experience in providing alcohol treatment, other drug abuse treatment, or both alcohol and other drug abuse treatment who is certified each year by the Department of Mental Health and Substance Abuse Services to provide these assessments. However, any person who does not meet the requirements for a qualified practitioner as defined herein, but who has been previously certified by the Department of Mental Health and Substance Abuse Services to provide alcohol or drug treatment or assessments, shall be considered a qualified practitioner provided all education, experience and certification requirements stated herein are met within two (2) years from the effective date of this act.

C. When sentencing a person convicted of a crime, the court shall first consider a program of restitution for the victim, as well as imposition of a fine or incarceration of the offender. If the defendant fails to pay restitution in the manner or within the time period specified by the court, the court may enter an order directing the sheriff or any peace officer of this state to seize any real or personal property of the defendant, except property

exempt under Section 1 of Title 31 of the Oklahoma Statutes, to be held until a forfeiture for sale has been declared or release ordered. The forfeiture procedure shall be the procedure provided in Section 991a-11 of this title. The provisions of paragraph 1 of subsection A of this section shall not apply to defendants being sentenced upon their third or subsequent to their third conviction of a felony or, beginning January 1, 1993, to defendants being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma Statutes, except as otherwise provided in this subsection. In the case of a person being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma Statutes, the court may sentence the person pursuant to the provisions of paragraph 1 of subsection A of this section if the court orders the person to submit to electronically monitored home detention administered and supervised by the Department of Corrections pursuant to subparagraph e of paragraph 5 of subsection A of this section.

D. When sentencing a person convicted of a crime, the judge shall consider any victim impact statements if submitted to the jury, or the judge in the event a jury is waived.

E. Probation, for purposes of subsection A of this section, is a procedure by which a defendant found guilty of a crime, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, is released by the court subject to conditions imposed by the court and subject to the supervision of the Department of Corrections. Such supervision shall be initiated upon an order of probation from the court, and shall not exceed two (2) years, except as otherwise provided by law. In the case of a person convicted of a sex offense, supervision shall not be limited to two (2) years. Provided further any supervision provided for in this section may be extended for a period not to exceed the expiration of the maximum

term or terms of the sentence upon a determination by the Division of Probation and Parole of the Department of Corrections that the best interests of the public and the releasee will be served by an extended period of supervision.

F. The Department of Corrections, or such other agency as the court may designate, shall be responsible for the monitoring and administration of the restitution and service programs provided for by subparagraphs a, c, and d of paragraph 1 of subsection A of this section, and shall ensure that restitution payments are forwarded to the victim and that service assignments are properly performed.

G. 1. The Division of Probation and Parole of the Department of Corrections is hereby authorized, subject to funds available through appropriation by the Legislature, to contract with counties for the administration of county Community Service Sentencing Programs.

2. Any offender eligible to participate in the Program pursuant to this act shall be eligible to participate in a county Program; provided, participation in county-funded Programs shall not be limited to offenders who would otherwise be sentenced to confinement with the Department of Corrections.

3. The Division shall establish criteria and specifications for contracts with counties for such Programs. A county may apply to the Division for a contract for a county-funded Program for a specific period of time. The Department shall be responsible for ensuring that any contracting county complies in full with specifications and requirements of the contract. The contract shall set appropriate compensation to the county for services to the Division.

4. The Division is hereby authorized to provide technical assistance to any county in establishing a Program, regardless of whether the county enters into a contract pursuant to this subsection. Technical assistance shall include appropriate

staffing, development of community resources, sponsorship, supervision and any other requirements set forth in this act.

5. The Department shall annually make a report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House on the number of such Programs, the number of participating offenders, the success rates of each Program according to criteria established by the Department and the costs of each Program.

H. As used in this section:

1. "Ignition interlock device" means a device that, without tampering or intervention by another person, would prevent the defendant from operating a motor vehicle if the defendant has a blood or breath alcohol concentration of five-hundredths (0.05) or greater; and

2. "Electronically monitored home detention" means incarceration of the defendant within a specified location or locations with monitoring by means of a device approved by the Department of Corrections that detects if the person leaves the confines of any specified location.

SECTION 7. 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:

<u>IN THE DISTRICT COURT OF</u>		<u>COUNTY, STATE OF OKLAHOMA</u>	
<u>THE STATE OF OKLAHOMA,</u>)		
)		
)	<u>Plaintiff,</u>	<u>No.:</u> _____
<u>vs.</u>)		<u>DOB:</u> _____
_____)		<u>SSNo.:</u> _____
)	<u>Defendant.</u>	

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

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

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 8. 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 9. 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 receive only those earned credits pursuant to and limited by subparagraph b of paragraph 2 of subsection E of this section and paragraph 2 of subsection H of this section.

B. Except as otherwise provided by law, every inmate of a state correctional institution 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. a. Class level corresponding credits for inmates who were sentenced for crimes committed on or prior to July 1, 1996, 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.

b. Class level corresponding credits for inmates who are sentenced for crimes committed on or after July 1, 1996, are as follows:

Class 1 - 0 Credits per month;

Class 2 - 3 Credits per month;

Class 3 - 5 Credits per month;

Class 4 - 10 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. 1. For inmates who were sentenced for crimes committed on or 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;

2. For inmates who are sentenced for crimes committed on or after 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 45 credits;

Certification of Completion of Vocational Training 40 credits;

Successful completion of Alcohol/Chemical Abuse Treatment Program of not less than four (4) months continuous participation 35 credits;

Successful completion of other Educational Accomplishments or other programs not specified in this subsection 5 - 15 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.~~ 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 10. 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 11. 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)~~ sixty-five percent (65%) 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)~~ sixty-five percent (65%) 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 sixty-five percent (65%) 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 12. 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 13. 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, battery, or assault and battery with a dangerous weapon;~~
- ~~b. aggravated assault and battery on a police officer, sheriff, highway patrolman, or any other officer of the law;~~
- ~~c. poisoning with intent to kill;~~
- ~~d. shooting with intent to kill;~~
- ~~e. assault with intent to kill;~~
- ~~f. assault with intent to commit a felony;~~
- ~~g. assaults while masked or disguised;~~
- ~~h. murder in the first degree;~~
- ~~i. murder in the second degree;~~
- ~~j. manslaughter in the first degree;~~
- ~~k. manslaughter in the second degree;~~
- ~~l. kidnapping;~~
- ~~m. burglary in the first degree;~~
- ~~n. burglary with explosives;~~
- ~~o. kidnapping for extortion;~~
- ~~p. maiming;~~

- q. robbery;
- r. robbery in the first degree;
- s. robbery in the second degree;
- t. armed robbery;
- u. robbery by two (2) or more persons;
- v. robbery with dangerous weapon or imitation firearm;
- w. child beating;
- x. wiring any equipment, vehicle or structure with explosives;
- y. forcible sodomy;
- z. rape in the first degree;
- aa. rape in the second degree;
- bb. rape by instrumentation;
- cc. lewd or indecent proposition or lewd or indecent act with a child;
- dd. use of a firearm or offensive weapon to commit or attempt to commit a felony;
- ee. pointing firearms;
- ff. rioting;
- gg. inciting to riot;
- hh. arson in the first degree;
- ii. injuring or burning public buildings;
- jj. sabotage;
- kk. criminal syndicalism;
- ll. extortion;
- mm. obtaining signature by extortion;
- nn. seizure of a bus, discharging firearm or hurling missile at bus; or
- oo. mistreatment of a mental patient.

SECTION 14. 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 15. Section 1 of this act shall not be codified in the Oklahoma Statutes.

SECTION 16. Section 1 and Sections 5 through 12 of this act shall become effective July 1, 1995.

SECTION 17. Sections 2, 3 and 4 of this act shall become effective July 1, 1996.

SECTION 18. Sections 13 and 14 shall become effective January 1, 2001.

SECTION 19. 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.

45-1-5859

SD