

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1688

By: Hastings

AS INTRODUCED

An Act relating to truth in sentencing; creating the Truth in Sentencing Act; amending 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), which relates to earned credits; limiting maximum number of earned credits for certain inmates; amending 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), which relates to persons eligible for parole; modifying eligibility; making certain persons ineligible for parole; 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; repealing Sections 4 and 5, Chapter 187, O.S.L. 1993 (57 O.S. Supp. 1994, Sections 610 and 611), which relate to

the Prison Population Management Act of 1993; and providing an effective date.

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. 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. 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. 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. 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. 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 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. 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. 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 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. 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. As of the effective date of this act, 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.

J. Any inmate convicted of a felony committed on or after November 1, 1995, shall not be able to apply earned credits to reduce the sentence imposed upon such inmate more than fifteen percent (15%).

SECTION 3. 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~~ Except as provided in subsections B and C of this section, 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, ~~unless such person shall have served the lesser of at least one-third (1/3) of the sentence imposed, or ten (10) years; provided that whenever the population of the prison system exceeds ninety-five percent (95%) of the capacity as certified by the State Board of Corrections, the Pardon and Parole Board may, at its discretion, recommend to the Governor for parole any person who is incarcerated for a nonviolent offense not involving injury to a person and who is within six (6) months of his or her statutory parole eligibility date.~~

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

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

SECTION 4. 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. 1. Assault, battery, or assault and battery with a dangerous weapon;~~

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

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

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

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

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

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

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

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

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

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

~~l. 12. Kidnapping;~~

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

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

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

- ~~p.~~ 16. Maiming;
- ~~q.~~ 17. Robbery;
- ~~r.~~ 18. Robbery in the first degree;
- ~~s.~~ 19. Robbery in the second degree;
- ~~t.~~ 20. Armed robbery;
- ~~u.~~ 21. Robbery by two (2) or more persons;
- ~~v.~~ 22. Robbery with dangerous weapon or imitation firearm;
- ~~w.~~ 23. Child beating;
- ~~x.~~ 24. Wiring any equipment, vehicle or structure with explosives;
- ~~y.~~ 25. Forcible sodomy;
- ~~z.~~ 26. Rape in the first degree;
- ~~aa.~~ 27. Rape in the second degree;
- ~~bb.~~ 28. Rape by instrumentation;
- ~~cc.~~ 29. Lewd or indecent proposition or lewd or indecent act with a child;
- ~~dd.~~ 30. Use of a firearm or offensive weapon to commit or attempt to commit a felony;
- ~~ee.~~ 31. Pointing firearms;
- ~~ff.~~ 32. Rioting;
- ~~gg.~~ 33. Inciting to riot;
- ~~hh.~~ 34. Arson in the first degree;
- ~~ii.~~ 35. Injuring or burning public buildings;
- ~~jj.~~ 36. Sabotage;
- ~~kk.~~ 37. Criminal syndicalism;
- ~~ll.~~ 38. Extortion;
- ~~mm.~~ 39. Obtaining signature by extortion;
- ~~nn.~~ 40. Seizure of a bus, discharging firearm or hurling missile at bus; or
- ~~oo.~~ 41. Mistreatment of a mental patient.

SECTION 5. 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 and Sections 4 and 5, Chapter 187, O.S.L. 1993 (57 O.S. Supp. 1994, Sections 574.1, 610 and 611), are hereby repealed.

SECTION 6. This act shall become effective November 1, 1995.

45-1-5909

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