

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 2091

By: Weese

AS INTRODUCED

An Act relating to truth in sentencing; creating the Oklahoma 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. 1996, Section 138), which relates to earned credits; modifying earned credits for certain inmates; amending 57 O.S. 1991, Section 332.7, as last amended by Section 1, Chapter 168, O.S.L. 1996 (57 O.S. Supp. 1996, Section 332.7), which relates to the Pardon and Parole Board; prohibiting the Board from recommending certain persons for parole; amending 57 O.S. 1991, Section 365, as amended by Section 7, Chapter 125, O.S.L. 1993 (57 O.S. Supp. 1996, Section 365), which relates to the Preparole Conditional Supervision Program; modifying eligibility guidelines; amending Section 5, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1996, Section 510.9), which relates to the Electronic Monitoring Program; modifying scope of eligibility and eligibility guidelines; amending 57 O.S. 1991, Section 571, as amended by Section 10, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1996, Section 571), which relates to definitions for the Oklahoma Prison Overcrowding Emergency Powers Act; modifying

scope of a definition; eliminating definitions; amending 21 O.S. 1991, Sections 701.9, 701.10, as amended by Section 1, Chapter 67, O.S.L. 1992 and 701.11 (21 O.S. Supp. 1996, Section 701.10), which relate to murder in the first degree; modifying penalty; amending 21 O.S. 1991, Sections 886 and 888, as amended by Sections 1 and 2, Chapter 289, O.S.L. 1992 (21 O.S. Supp. 1996, Sections 886 and 888), which relate to sodomy and forcible sodomy; modifying penalty; amending 21 O.S. 1991, Section 1123, as amended by Section 3, Chapter 289, O.S.L. 1992 (21 O.S. Supp. 1996, Section 1123), which relates to lewd or indecent proposals or acts as to a child; modifying penalty; 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. 1996, 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. 1996, Sections 610 and 611), which relate to the Prison Population Management Act of 1993; providing for noncodification; 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 "Oklahoma 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. 1996, 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. a. Class level corresponding credits for eligible inmates, other than inmates provided for in subsection L of this section, 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 provided for in subsection L of this section are as follows:

Class 1 - 0 Credits per month;

Class 2 - 2 Credits per month;

Class 3 - 3 Credits per month;

Class 4 - 4 2/3 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 provided for in subsection L of this section shall receive more than fifty-four (54) achievement credits per calendar year. No eligible inmate, other than an inmate provided for in subsection L of this section, 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~~ 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.

J. Any inmate convicted of a violent crime committed on or after November 1, 1997, shall not be eligible for earned credits. As used in this subsection, "violent crime" means any offense listed in the exceptions to the definition of nonviolent offense provided in Section 571 of this title.

K. Any inmate convicted of a felony crime committed on or after November 1, 1997, who has two or more prior felony convictions, shall not be eligible for earned credits.

L. Any inmate convicted of a felony crime committed on or after November 1, 1997, who has one prior felony conviction or no prior felony convictions shall not be eligible for earned credits in excess of fifteen percent (15%) of the sentence imposed for the crime for which the inmate is currently incarcerated. Any credits earned by an inmate shall not be considered a reduction of the sentence imposed for purposes of parole consideration.

SECTION 3. AMENDATORY 57 O.S. 1991, Section 332.7, as last amended by Section 1, Chapter 168, O.S.L. 1996 (57 O.S. Supp. 1996, 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. The Pardon and Parole Board shall not recommend to the Governor any person who has been convicted of murder in the first degree, a lewd or indecent proposal or act with a child, forcible sodomy, rape in the first degree, kidnapping for purpose or extortion, robbery with a dangerous weapon, arson in the first degree, shooting with intent to kill, discharge of a weapon from a vehicle, assault and battery with a dangerous weapon, or use of a firearm or other offensive weapon while committing a felony.

D. Any person in the custody of the Department of Corrections who is convicted of an offense not designated as a violent offense by Section 571 of ~~Title 57 of the Oklahoma Statutes~~ this title and who is not a citizen of the United States and is or becomes subject of a final order of deportation issued by the United States Department of Justice shall be considered for parole to the custody of the United States Immigration and Naturalization Service for continuation of deportation proceedings at any time subsequent to processing through the Lexington Assessment and Reception Center.

~~D.~~ E. 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.

~~E.~~ F. 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 365, as amended by Section 7, Chapter 125, O.S.L. 1993 (57 O.S. Supp. 1996, 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%)~~ eighty-five percent (85%) 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.

SECTION 5. AMENDATORY Section 5, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1996, Section 510.9), is amended to read as follows:

Section 510.9 A. There is hereby created the Electronic Monitoring Program for inmates in the custody of the Department of Corrections who are sentenced for a nonviolent offense, as defined by Section 571 of ~~Title 57 of the Oklahoma Statutes~~ this title, and have served at least eighty-five percent (85%) of their imposed sentences.

B. All eligible inmates assigned to the Electronic Monitoring Program shall first be processed and received through the Lexington Assessment and Reception Center. The Director of the Department of Corrections shall exercise his discretion in selecting eligible inmates for assignment to the Electronic Monitoring Program; provided, however, the following inmates shall not be eligible for assignment to the program:

1. Inmates convicted of a violent offense within the previous ten (10) years;

2. Inmates convicted of three or more felonies, including the offense for which the inmate is currently incarcerated;

3. Inmates convicted of any violation of the provisions of the Trafficking in Illegal Drugs Act, Section 2-414 et seq. of Title 63 of the Oklahoma Statutes;

~~3.~~ 4. Inmates denied parole within the previous twelve (12) months pursuant to Section 332.7 of ~~Title 57 of the Oklahoma Statutes~~ this title;

~~4.~~ 5. Inmates convicted pursuant to Section 11-902 of Title 47 of the Oklahoma Statutes who are not receptive to substance abuse treatment and follow-up treatment;

~~5.~~ 6. Inmates removed from the Electronic Monitoring Program or any other alternative to incarceration authorized by law for violation of any rule, regulation or condition of the program and reassigned to imprisonment in a correctional facility;

~~6.~~ 7. Inmates deemed by the Department to be a security risk or threat to the public; or

~~7.~~ 8. Inmates requiring educational, medical or other services or programs not available in a community setting as determined by the Department.

In addition, any inmate removed from the Electronic Monitoring Program for violation of any rule, regulation or condition of the program and reassigned to imprisonment in a correctional facility

shall not be eligible for consideration for the Preparole Conditional Supervision Program, pursuant to Section 365 of ~~Title 57 of the Oklahoma Statutes~~ this title, until after the expiration of at least twelve (12) consecutive months of imprisonment at a correctional facility.

C. Every eligible inmate assigned to the Electronic Monitoring Program shall remain in such program until one of the following conditions has been met:

1. The inmate discharges the term of the sentence;

2. The inmate is removed from the Electronic Monitoring Program for violation of any rule, regulation or condition of the program and reassigned to imprisonment in a correctional facility;

3. The inmate is assigned by the Department to another alternative to incarceration authorized by law, except inmates assigned to the Electronic Monitoring Program shall not be considered for the Preparole Conditional Supervision Program, Section 365 of ~~Title 57 of the Oklahoma Statutes~~ this title, except as provided in subsection B of this section; or

4. The inmate is paroled by the Governor pursuant to Section 332.7 of ~~Title 57 of the Oklahoma Statutes~~ this title.

D. After an inmate has been assigned to the Electronic Monitoring Program, failure to be granted parole pursuant to Section 332.7 of ~~Title 57 of the Oklahoma Statutes~~ this title shall not be cause for removal from the program, provided the inmate has not violated the rules, regulations or conditions of the program. The inmate may remain assigned to the program, if otherwise eligible, until the completion of the sentence.

E. The Electronic Monitoring Program shall require active supervision of the inmate in a community setting by a correctional officer or other employee of the Department of Corrections with monitoring by an electronic bracelet or other device approved by the Department under such rules, regulations and conditions as may be

established by the Department. If an inmate violates any rule, regulation or condition of the program, the Department may take necessary disciplinary action consistent with the rules established pursuant to this act, including reassignment to a higher level of security or removing the inmate from the program with reassignment to imprisonment in a correctional facility. Any inmate who escapes from the Electronic Monitoring Program shall be subject to the provisions of Section 443 of Title 21 of the Oklahoma Statutes.

F. Upon an inmate assigned to the Electronic Monitoring Program becoming eligible for parole consideration, pursuant to Section 332.7 of ~~Title 57 of the Oklahoma Statutes~~ this title, the Department of Corrections shall deliver the inmate, in person, to a correctional facility for interview, together with any Department records necessary for the Pardon and Parole Board's investigation. Inmates assigned to the Electronic Monitoring Program shall not be allowed to waive consideration or recommendation for parole.

G. Prior to any eligible inmate assigned to the Electronic Monitoring Program being placed in a community setting, the Department of Corrections shall deliver a written notification to the sheriff and district attorney of the county, and the chief law enforcement officer of any incorporated city or town in which the inmate is to be monitored and supervised under the program. The district attorney shall disseminate such information to victims of the crime for which the inmate is serving sentence, if any, when the victims are known to live in the same city, town or county.

H. An inmate assigned to the Electronic Monitoring Program may be required to pay the Department of Corrections for all or part of any monitoring equipment or fee, substance abuse treatment program or follow-up treatment expense, supervision cost, or other costs while assigned to the program. The Department shall determine whether the inmate has the ability to pay all or part of such fee or costs.

I. The Department of Corrections shall promulgate and adopt rules, regulation and procedures necessary to implement the Electronic Monitoring Program, including but not limited to methods of monitoring and supervision, disciplinary action, reassignment to higher and lower security levels, removal from the program, and costs of monitoring and supervision to be paid by the inmate, if any.

SECTION 6. AMENDATORY 57 O.S. 1991, Section 571, as amended by Section 10, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1996, 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 7. AMENDATORY 21 O.S. 1991, Section 701.9, is amended to read as follows:

Section 701.9 A. A person who is convicted of or pleads guilty or nolo contendere to murder in the first degree shall be punished by death, or by imprisonment for life without parole ~~or by imprisonment for life.~~

B. A person who is convicted of or pleads guilty or nolo contendere to murder in the second degree shall be punished by imprisonment in a state penal institution for not less than ten (10) years nor more than life.

SECTION 8. AMENDATORY 21 O.S. 1991, Section 701.10, as amended by Section 1, Chapter 67, O.S.L. 1992 (21 O.S. Supp. 1996, Section 701.10), is amended to read as follows:

Section 701.10 A. Upon conviction or adjudication of guilt of a defendant of murder in the first degree, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death, or life imprisonment without parole ~~or life imprisonment.~~ The proceeding shall be conducted by the trial judge before the same trial jury as soon as practicable without presentence investigation.

B. If the trial jury has been waived by the defendant and the state, or if the defendant pleaded guilty or nolo contendere, the sentencing proceeding shall be conducted before the court.

C. In the sentencing proceeding, evidence may be presented as to any mitigating circumstances or as to any of the aggravating circumstances enumerated in Section 701.7 et seq. of this title. Only such evidence in aggravation as the state has made known to the defendant prior to his trial shall be admissible. In addition, the state may introduce evidence about the victim and about the impact of the murder on the family of the victim.

D. This section shall not be construed to authorize the introduction of any evidence secured in violation of the Constitutions of the United States or of the State of Oklahoma. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

SECTION 9. AMENDATORY 21 O.S. 1991, Section 701.11, is amended to read as follows:

Section 701.11 In the sentencing proceeding, the statutory instructions as determined by the trial judge to be warranted by the evidence shall be given in the charge and in writing to the jury for its deliberation. The jury, if its verdict be a unanimous recommendation of death, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstance or circumstances which it unanimously found beyond a reasonable doubt. In nonjury cases the judge shall make such designation. Unless at least one of the statutory aggravating circumstances enumerated in this act is so found or if it is found that any such aggravating circumstance is outweighed by the finding of one or more mitigating circumstances, the death penalty shall not be imposed. If the jury cannot, within a reasonable time, agree as to punishment, the judge shall dismiss the jury and impose a sentence of imprisonment for life without parole ~~or imprisonment for life.~~

SECTION 10. AMENDATORY 21 O.S. 1991, Section 886, as amended by Section 1, Chapter 289, O.S.L. 1992 (21 O.S. Supp. 1996, Section 886), is amended to read as follows:

Section 886. Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is punishable by imprisonment in the penitentiary not exceeding ten (10) years. Any person convicted of a second violation of this section, where the victim of the second offense is a person under sixteen (16) years of age, shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the State Penitentiary for a term of ~~life or~~ life without parole, ~~in the discretion of the jury, or in case the jury fail or refuse to fix punishment then the same shall be pronounced by the court.~~

SECTION 11. AMENDATORY 21 O.S. 1991, Section 888, as amended by Section 2, Chapter 289, O.S.L. 1992 (21 O.S. Supp. 1996, Section 888), is amended to read as follows:

Section 888. A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 of this title, upon conviction, is guilty of a felony punishable by imprisonment in the penitentiary for a period of not more than twenty (20) years. Any person convicted of a second violation of this section, where the victim of the second offense is a person under sixteen (16) years of age, shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the State Penitentiary for a term of ~~life or~~ life without parole, ~~in the discretion of the jury, or in case the jury fail or refuse to fix punishment then the same shall be pronounced by the court.~~

B. The crime of forcible sodomy shall include:

1. Sodomy committed by a person over eighteen (18) years of age upon a person under sixteen (16) years of age; or

2. Sodomy committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime; or

3. Sodomy accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the victim or the person committing the crime.

SECTION 12. AMENDATORY 21 O.S. 1991, Section 1123, as amended by Section 3, Chapter 289, O.S.L. 1992 (21 O.S. Supp. 1996, Section 1123), is amended to read as follows:

Section 1123. A. Any person who shall knowingly and intentionally:

1. Make any oral or written lewd or indecent proposal to any child under sixteen (16) years of age for the child to have unlawful sexual relations or sexual intercourse with any person; or

2. Look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law; or

3. Ask, invite, entice, or persuade any child under sixteen (16) years of age to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child; or

4. In any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any indecent manner or in any manner relating to sexual matters or sexual interest; or

5. In a lewd and lascivious manner and for the purpose of sexual gratification, urinate or defecate upon a child under sixteen

(16) years of age or ejaculate upon or in the presence of a child, or force or require a child to look upon the body or private parts of another person or upon sexual acts performed in the presence of the child or force or require a child to touch or feel the body or private parts of said child or another person, upon conviction, shall be deemed guilty of a felony and shall be punished by imprisonment in the Oklahoma State Penitentiary for not less than one (1) year nor more than twenty (20) years. The provisions of this section shall not apply unless the accused is at least three (3) years older than the victim. Any person convicted of a second violation of subsection A of this section shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of subsection A of this section shall be punished by imprisonment in the State Penitentiary for a term of ~~life or~~ life without parole, ~~in the discretion of the jury, or in case the jury fail or refuse to fix punishment then the same shall be pronounced by the court.~~

B. No person shall commit sexual battery on any other person. "Sexual battery" shall mean the intentional touching, mauling or feeling of the body or private parts of any person sixteen (16) years of age or older, in a lewd and lascivious manner and without the consent of that person. Any person convicted of any violation of this subsection shall be deemed guilty of a felony and shall be punished by imprisonment in the Oklahoma State Penitentiary for not more than five (5) years.

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 and Sections 4 and 5, Chapter 187, O.S.L. 1993 (57 O.S. Supp. 1996, Sections 574.1, 610 and 611), are hereby repealed.

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

SECTION 15. This act shall become effective November 1, 1997.

46-1-5034

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