

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 2135

By: Hilliard

AS INTRODUCED

An Act relating to prisons and reformatories;
amending 22 O.S. 1991, Section 991a-4, as last amended by Section 1, Chapter 187, O.S.L. 1993 (22 O.S. Supp. 1996, Section 991a-4), which relates to the Community Service Sentencing Program; modifying certain qualification for Program, upon agreement between the court and the district attorney;
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; requiring approval by the Governor for an inmate to be placed in the Program; providing for recommendation by the Pardon and Parole Board; transferring notification and disciplinary responsibilities to the Pardon and Parole Board; amending 57 O.S. 1991, Section 510.3, as amended by Section 3, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1996, Section 510.3), which relates to inmates completing vocational-technical training, Section 15, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1996, Section 510.10), which relates to electronic monitoring, 57 O.S. 1991, Section 513.2, as amended by Section 6, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1996, Section 513.2), which relates

to notification of completion of sentence or discharge of inmate from custody and Section 14, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1996, Section 612), which relates to assignment of persons convicted of violating certain statute; removing references to certain early release programs; repealing 57 O.S. 1991, Sections 510.2, as amended by Section 2, Chapter 276, O.S.L. 1993 and 510.4, as amended by Section 4, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1996, Sections 510.2 and 510.4), which relate to house arrest, Section 5, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1996, Section 510.9), which relates to electronic monitoring, and 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; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 991a-4, as last amended by Section 1, Chapter 187, O.S.L. 1993 (22 O.S. Supp. 1996, Section 991a-4), is amended to read as follows:

Section 991a-4. A. There is hereby created the "Community Service Sentencing Program". The purpose of the program shall be to provide an alternative to incarceration for nonviolent felony offenders who would normally be sentenced to incarceration in a state institution.

B. Any eligible offender may be sentenced, at the discretion of the judge, to a Community Service Sentencing Program pursuant to the

provisions of this section. For purposes of this section, "eligible offender" shall mean any person who:

1. Is not participating in the Delayed Sentencing Program for Young Adults pursuant to the provisions of ~~Section~~ Sections 996 through 996.3 of this title;

2. Has not previously been convicted of two or more felonies, unless this restriction is waived by agreement between the court and the district attorney;

3. Has been convicted of a nonviolent felony offense which shall be defined as any felony offense except assault and battery with a dangerous weapon, aggravated assault and battery on a law officer, poisoning with intent to kill, shooting with intent to kill, assault with intent to kill, assault with intent to commit a felony, murder in the first degree, murder in the second degree, manslaughter in the first degree, manslaughter in the second degree, kidnapping, burglary in the first degree, kidnapping for extortion, maiming, robbery, child beating, wiring any equipment, vehicle, or structure with explosives, forcible sodomy, rape in the first degree or rape by instrumentation, lewd or indecent proposition or lewd or indecent act with a child under sixteen (16) years of age, use of a firearm or offensive weapon to commit or attempt to commit a felony, pointing firearms, rioting or arson in the first degree;

4. Has properly completed and executed all necessary documents;
and

5. Is not otherwise ineligible by law or court rule.

C. The Department of Corrections shall administer the Program, except in counties with a population of five hundred fifty thousand (550,000) or more persons that operate an existing program. The Department shall conduct a presentence investigation pursuant to the provisions of Section 982 of this title if the court determines the offender is to be assigned to the Program. The offender shall not be able to waive the presentence investigation. As part of ~~such~~ the

presentence investigation, the Department shall interview the offender and advise him of the requirements and conditions of the Program. The Department shall recommend an assignment of the offender to any one or combination of the following areas:

1. Community service, with or without compensation;
2. Education, vocational-technical education or literacy

programs;

3. Substance abuse treatment programs;
4. Periodic testing for the presence of controlled substances;
5. Psychological counseling or psychiatric treatment;
6. Medical treatment;

7. Restitution, to be paid either to the victim of the offense or to the Crime Victims Compensation Revolving Fund created pursuant to the provisions of Section 142.17 of Title 21 of the Oklahoma Statutes;

8. Confinement in a county jail for a period not to exceed one (1) year, night or weekend incarceration pursuant to the provisions of Section 991a-2 of this title or incarceration by the Department of Corrections; provided, the Department of Corrections shall reimburse a county which does not receive payments from any other source for the cost of the necessary expenses of such persons during periods of such incarceration in an amount not to exceed Twenty Dollars (\$20.00) per day and any county receiving such payments in an amount not to exceed Ten Dollars (\$10.00) per day. The Department shall reimburse the county for the actual cost paid for any emergency medical care for physical injury or illness of such persons if the county is required by law to provide such care for inmates in the jail. The reimbursements provided by this section shall not exceed the cost that would have accrued to the state for the feeding, care or medical care of the persons had they been incarcerated with the Department. Except as otherwise provided by law, all provisions of the Oklahoma Corrections Act of 1967, Section

501 et seq. of Title 57 of the Oklahoma Statutes, shall apply to such persons, including but not limited to any provisions requiring payment by such persons of the costs of incarceration; or

9. Probation or conditional probation.

D. In counties with a population of five hundred fifty thousand (550,000) or more persons that operate an existing program, the Department of Corrections is hereby authorized to reimburse the county sheriff, pursuant to paragraph 8 of subsection C of this section, the cost of necessary expenses for confinement in the county jail for any eligible offender as defined in subsection B of this section. Such reimbursement shall be subject to appropriation by the Legislature. The Department may promulgate rules and procedures for submitting claims for reimbursements.

E. The judge shall consider the criminal history of the offender, the nature of the offender's criminal conduct, the employment and family history of the offender and any other factors he deems relevant when sentencing persons to the Program. Following the presentence investigations and recommendation, the judge shall impose sentence. The judge may accept the recommendation, with or without modifications thereto, or may reject the recommendation and impose any sentence allowed by law.

F. The provisions of Sections 20, 58.3, 138, 138.1 and 224 of Title 57 of the Oklahoma Statutes and Section 615 of Title 69 of the Oklahoma Statutes and any other provisions of law relating to earned credits for certain acts or service shall not apply to persons participating in the Program. The judge may establish a schedule of earned credits as part of the sentence.

G. The ~~Division~~ Department of Corrections shall establish a list of federal, state and local government agencies, community service agencies, nonprofit organizations, educational programs and other treatment programs willing to participate in the program to which offenders may be referred. The ~~Division~~ Department shall

periodically contact agencies, organizations and programs to which offenders are assigned to determine if offenders have reported and performed satisfactorily. Any such agency or program shall immediately notify the ~~Division~~ Department if an offender fails to fulfill any requirement of the Program. The ~~Division~~ Department or the sentencing judge may require additional documentation of the offender's work performance.

H. The ~~Division~~ Department of Corrections shall ensure that the sentencing judge and prosecuting attorney are notified in writing when an offender has successfully completed the assigned community service hours or other requirements of the Program or has failed to complete the requirements and provide any other relevant information required by the sentencing judge or prosecuting attorney.

I. All state and local government agencies, community service agencies, nonprofit organizations, educational programs and other treatment programs participating in the Program are hereby immune from liability for any offender participating in the Program under the Workers' Compensation Act, Section 1 et seq. of Title 85 of the Oklahoma Statutes, and for torts committed by or against any offender participating in the Program to the extent specified in Sections 227 and 228 of Title 57 of the Oklahoma Statutes.

J. Any offender participating in the Program shall be advised of the provisions of this section and shall, in writing, acknowledge that he has been advised of and understands the provisions of the Program.

SECTION 2. 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%) 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; and

4. Only inmates incarcerated for nonviolent offenses, as defined by Section 571 of this title, shall be eligible for 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 a favorable recommendation finding by the Pardon and Parole Board, the Board shall recommend to the Governor that the inmate be placed in the program. If approved by the Governor, 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~~ Pardon and Parole Board 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~~ Board 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~~ Board 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~~ Pardon and Parole Board.

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 3. AMENDATORY 57 O.S. 1991, Section 510.3, as amended by Section 3, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1996, Section 510.3), is amended to read as follows:

Section 510.3 The Department of Corrections shall implement procedures to ensure that eligible inmates who complete vocational-technical training shall be transferred to a community treatment center, ~~to the house arrest program, Section 510.2 of this title, or to other alternatives to incarceration authorized by law.~~ Those inmates shall have priority for such placement over other inmates who have not completed such programs.

SECTION 4. AMENDATORY Section 15, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1996, Section 510.10), is amended to read as follows:

Section 510.10 A. The Department of Corrections is hereby authorized to use electronic monitoring devices, ~~as defined by Section 14 of this act,~~ for any inmate sentenced to the custody of the Department, when such inmate is assigned, ~~as provided by law,~~ to ~~an alternative to incarceration or approved for placement under the provisions of the Preparole Conditional Supervision Program,~~ provided for in Section 365 of Title 57 of the Oklahoma Statutes this title.

The electronic monitoring of an inmate pursuant to this section shall be in addition to active supervision required by law and shall be considered a level of security and confinement for the inmate within the assigned program. ~~The provisions of this section shall not be construed to alter, amend or modify the criteria for eligibility for any alternative to incarceration program authorized by law or any of the provisions of the Electronic Monitoring Program, pursuant to Section 5 of this act.~~

The Department shall promulgate and adopt rules, regulations and procedures necessary to implement the provisions of this section.

B. As used in this section, "electronic monitoring device" means an electronic bracelet or other device approved by the Department of Corrections which is used to monitor the inmate within

a specified location or locations with active supervision by
correctional officers or other employees of the Department.

SECTION 5. AMENDATORY 57 O.S. 1991, Section 513.2, as amended by Section 6, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1996, Section 513.2), is amended to read as follows:

Section 513.2 The Department of Corrections shall notify the district attorney or requesting law enforcement agency of the sentencing county whenever an inmate completes his sentence or is otherwise discharged from the custody of the Department, except those discharged under the procedures and supervision of the Pardon and Parole Board. The notification shall be on a monthly basis and shall be made within ten (10) days following the month reported upon. ~~The notification shall include the names of those inmates released under the provisions of the Oklahoma Prison Overcrowding Emergency Powers Act, Section 570 et seq. of this title.~~ For the purposes of this section, "sentencing county" shall mean the county from which the inmate received the last sentence served prior to release but shall not refer to any sentences received which include inmate status as an element of the offense. Should the inmate be released from concurrent sentences then each sentencing county district attorney shall receive the notification. The district attorney shall disseminate the information provided herein to any and all law enforcement agencies deemed appropriate by the district attorney and to any victim of the crime for which the inmate was convicted. Notification shall be made to a victim by mailing the notification to the last-known address of the victim, if such information is requested by the victim. The district attorney shall not give the address of the inmate to any victim of the crime for which the inmate was convicted. The notifications required herein shall commence within ten (10) days following the first full month subsequent to the effective date of this ~~act~~ section.

SECTION 6. AMENDATORY Section 14, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1996, Section 612), is amended to read as follows:

Section 612. A. Any person convicted of violating the provisions of Section 11-902 of Title 47 of the Oklahoma Statutes and sentenced to the custody of the Department of Corrections shall be processed through the Lexington Assessment and Reception Center, classified and assigned as follows:

1. To the Department of Mental Health and Substance Abuse Services for substance abuse treatment, if the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk. The inmate may be required to reimburse the Department of Mental Health and Substance Abuse Services for all or part of the actual cost incurred for treatment of the inmate while the inmate is assigned to the Department of Mental Health and Substance Abuse Services. The Department of Corrections shall determine whether the inmate has the ability to pay for all or part of the cost of treatment. While assigned to a Department of Mental Health and Substance Abuse Services treatment program the inmate shall comply with the rules and regulations as agreed upon by the Department of Mental Health and Substance Abuse Services and the Department of Corrections. Any infraction of said rules may result in the inmate's reassignment to a correctional facility of the Department of Corrections. Upon successful completion of the treatment program the inmate shall be properly reassigned by the Department of Corrections for the completion of the sentence imposed by the court. Prior to discharge from the treatment facility, the treatment facility shall forward to the Department of Corrections a report and discharge summary including arrangements and recommendations for further disposition and follow-up treatment; or

~~2. To the Electronic Monitoring Program pursuant to Section 5 of this act, with participation in a substance abuse treatment program and follow-up treatment, when the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk;~~

~~3. To another alternative to incarceration authorized by law;~~
~~or~~

~~4. To a correctional facility when:~~

- ~~a. the person is evaluated not to be receptive to treatment,~~
- ~~b. the person is evaluated to be a security risk, or~~
- ~~c. the person requires educational, medical or other services or programs not available in the community setting as determined by the Department, ~~or~~~~
- ~~d. alternatives to incarceration are not available or are otherwise inappropriate as determined by the Department.~~

B. As used in this section:

~~1. "Substance, substance abuse treatment program" means a residential or outpatient program certified by the Department of Mental Health and Substance Abuse Services and selected by the Department of Corrections to provide substance abuse treatment for the inmate; and~~

~~2. "Electronic monitoring" means monitoring of the inmate within a specified location or locations in a community setting by means of an electronic bracelet or other device approved by the Department of Corrections with active supervision by correctional officers or other employees of the Department of Corrections.~~

SECTION 7. REPEALER 57 O.S. 1991, Sections 510.2, as amended by Section 2, Chapter 276, O.S.L. 1993 and 510.4, as amended by Section 4, Chapter 276, O.S.L. 1993, Section 5, Chapter 276, O.S.L. 1993 and Sections 4 and 5, Chapter 187, O.S.L. 1993 (57 O.S.

Supp. 1996, Sections 510.2, 510.4, 510.9, 610 and 611), are hereby repealed.

SECTION 8. This act shall become effective November 1, 1997.

46-1-5616

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