STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2616 By: Hilliard

AS INTRODUCED

An Act relating to prisons and reformatories; amending 3 O.S. 1991, Section 301, as amended by Section 109, Chapter 133, O.S.L. 1997 (3 O.S. Supp. 1997, Section 301), which relates to operation of aircraft while under the influence of intoxicants; amending 22 O.S. 1991, Section 980, which relates to duty of sheriff upon sentencing; amending 47 O.S. 1991, Section 11-902, as last amended by Section 5, Chapter 420, O.S.L. 1997 (47 O.S. Supp. 1997, Section 11-902), which relates to persons operating motor vehicles while under the influence of intoxicating substances; amending 57 O.S. 1991, Section 95, as amended by Section 2, Chapter 328, O.S.L. 1997 (57 O.S. Supp. 1997, Section 95), which relates to delivery of sentenced person by sheriff; amending 57 O.S. 1991, Section 138, as last amended by Section 24, Chapter 133, O.S.L. 1997 (57 O.S. Supp. 1997, Section 138), which relates to earned credits; amending 57 O.S. 1991, Section 332.7, as last amended by Section 23, Chapter 333, O.S.L. 1997 (57 O.S. Supp. 1997, Section 332.7), which relates to parole consideration; amending 57 O.S. 1991, Section 530, as amended by Section 8, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1997, Section 530),

which relates to the Lexington Assessment and Reception Center; amending Section 14, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1997, Section 612), which relates to persons convicted of operating a motor vehicle while under the influence of intoxicating substances; providing for processing of inmates at locations other than the Lexington Assessment and Reception Center; providing that location be determined by the Director of the Department of Corrections; adding language from duplicate section of law regarding information to be delivered by sheriff to Department of Corrections; removing references to alternatives to incarceration for persons sentenced to the Department of Corrections for operating a motor vehicle while under the influence of intoxicating substances; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 3 O.S. 1991, Section 301, as amended by Section 109, Chapter 133, O.S.L. 1997 (3 O.S. Supp. 1997, Section 301), is amended to read as follows:

Section 301. A. It is unlawful and punishable as provided in subsection D of this section for any person to operate an aircraft within this state who:

1. Has a blood or breath alcohol concentration, as defined in Section 305 of this title, of four-hundredths (0.04) or more within two (2) hours after the arrest of such person; or

2. Is under the influence of any intoxicant.

B. The fact that any person charged with a violation of this section is or has been lawfully entitled to use an intoxicant shall not constitute a defense against any charge of violating this section.

C. As used in Sections 301 through 308 of this title:

1. "Intoxicant" means:

a. any beverage containing alcohol,

b. any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes,

c. any substance which is capable of being ingested, inhaled, injected or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions of the human body, and

d. any combination of alcohol, controlled dangerous substances, and substances capable of being ingested, inhaled, injected or absorbed into the human body and capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions of the human body; and

2. "Operate" means manipulating any of the levers, the starting mechanism, the brakes or other mechanism or device of an aircraft, setting in motion any aircraft, or piloting any aircraft.

D. Every person who is convicted of a violation of the provisions of this section shall be deemed guilty of a misdemeanor for the first offense and shall be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year, and a fine of not more than One Thousand Dollars ($1,000.00). Any person who within ten (10) years after a previous conviction of a violation of this section is convicted of a second or subsequent offense pursuant to the provisions of this section or has a prior conviction

within ten (10) years prior to the conviction pursuant to the provisions of this section, in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection A of this section shall be guilty of a felony. The fine for a second or subsequent offense shall not exceed Two Thousand Five Hundred Dollars ($2,500.00); provided, such fine shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. When a sentence of incarceration is imposed, the person shall be processed through the Lexington Assessment and Reception Center <u>or at a place determined by the Director of the Department of Corrections</u>. If the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk, the person shall be assigned to the Department of Mental Health and Substance Abuse Services for substance abuse treatment. The inmate shall 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 was assigned to the Department of Mental Health and Substance Abuse Services, if at the time the sentence of incarceration was imposed, the court determined that the convicted person has the ability to pay for all or part of the cost of treatment. The court shall determine the amount of reimbursement the convicted person shall pay. While assigned to such 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 person 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. If the person is evaluated not to be receptive to treatment or is evaluated to be a security risk, the inmate shall be assigned to a state correctional facility according to normal Department of Corrections classification procedures. In the event a felony conviction does not result in a sentence of incarceration as provided for in this subsection, the person shall be required to serve not less than ten (10) days of community service, or to undergo in-patient rehabilitation or treatment in a public or private facility with at least minimum security for a period of not less than forty-eight (48) consecutive hours, notwithstanding the provisions of Sections 991a, 991a-2 and 996.3 of Title 22 of the Oklahoma Statutes.

E. Any person who is found guilty of a violation of the provisions of this section may be referred, prior to sentencing, to an alcoholism evaluation facility designated 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 for the evaluation in an amount not to exceed Seventy-five Dollars ($75.00). The facility shall, within seventy-two (72) hours, submit a written report to the court for the purpose of assisting the court in its final sentencing determination.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 980, is amended to read as follows:

Section 980. If the judgment is for imprisonment in a state prison, the sheriff of the county or subdivision must, upon receipt of a certified copy thereof, take and deliver the defendant to the warden of the Lexington Assessment and Reception Center <u>or to a place determined by the Director of the Department of Corrections</u>.

~~He~~ The sheriff must also deliver to the ~~warden~~ Department of Corrections a certified copy of the judgment, and take from the ~~warden~~ Department of Corrections a receipt for the defendant, and make return thereof to the court.

SECTION 3. AMENDATORY 47 O.S. 1991, Section 11-902, as last amended by Section 5, Chapter 420, O.S.L. 1997 (47 O.S. Supp. 1997, Section 11-902), is amended to read as follows:

Section 11-902. A. It is unlawful for any person to drive, operate, or be in actual physical control of a motor vehicle within this state who:

1. Has a blood or breath alcohol concentration, as defined in Section 756 of this title, of ten-hundredths (0.10) or more at the time of a test of such person's blood or breath administered within two (2) hours after the arrest of such person;

2. Is under the influence of alcohol;

3. Is under the influence of any intoxicating substance other than alcohol which may render such person incapable of safely driving or operating a motor vehicle; or

4. Is under the combined influence of alcohol and any other intoxicating substance which may render such person incapable of safely driving or operating a motor vehicle.

B. The fact that any person charged with a violation of this section is or has been lawfully entitled to use alcohol or a controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this section.

As used in this title, the term "other intoxicating substance" shall mean any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes, and any other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely

affecting the central nervous system, vision, hearing or other sensory or motor functions.

C. Every person who is convicted of a violation of the provisions of this section shall be deemed guilty of a misdemeanor for the first offense and shall be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year, and a fine of not more than One Thousand Dollars ($1,000.00). Any person who, within ten (10) years after a previous conviction of a violation of this section or a violation pursuant to the provisions of any law of another state prohibiting the offense provided in subsection A of this section, is convicted of a second offense pursuant to the provisions of this section or has a prior conviction in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection A of this section and within ten (10) years of such municipal conviction is convicted pursuant to the provision of this section shall be deemed guilty of a felony. The fine shall be not more than Two Thousand Five Hundred Dollars ($2,500.00). Such fine shall be in addition to other punishment provided for by law and shall not be imposed in lieu of such other punishment. Any person who is convicted of a second felony offense pursuant to the provisions of this section shall be subject to a fine of not more than Five Thousand Dollars ($5,000.00). Such fine shall be in addition to other punishment provided for by law and shall not be imposed in lieu of such other punishment. Any person who is convicted of a third or subsequent felony offense pursuant to the provisions of this section shall be subject to a fine of not more than Five Thousand Dollars ($5,000.00). Such fine shall be in addition to other punishment provided for by law and shall not be imposed in lieu of such other punishment.

Provided, however, a conviction from another state shall not be used to enhance punishment pursuant to the provisions of this

subsection if that conviction is based on a blood or breath alcohol concentration of less than ten-hundredths (0.10).

D. When a person is sentenced to the custody of the Department of Corrections, the person shall be processed through the Lexington Assessment and Reception Center <u>or at a place determined by the Director of the Department of Corrections</u>. The Department of Corrections shall classify and assign the person to one or more of the following:

1. The Department of Mental Health and Substance Abuse Services pursuant to paragraph 1 of subsection A of Section 612 of Title 57 of the Oklahoma Statutes; or

2. A correctional facility operated by the Department of Corrections.

E. The Department of Mental Health and Substance Abuse Services and the Department of Corrections may certify to the Department of Public Safety that a person has successfully completed a treatment program and is successfully complying with any follow-up treatment required by the Department of Corrections. In such case, the person shall be given credit therefor as fulfillment of all provisions of Section 3-453 of Title 43A of the Oklahoma Statutes and shall be permitted to apply for reinstatement of any suspension, revocation, cancellation or denial order withdrawing a privilege to drive.

F. The Department of Public Safety is hereby authorized to reinstate any suspended or revoked license when the applicant meets the statutory requirements which affect the existing driving privilege.

G. Any person who is found guilty of a violation of the provisions of this section 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 section 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 the provisions of 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 the provisions of 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 June 7, 1994. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence and any other sanction authorized by law for failure or refusal to comply with an order of the court.

H. Any person who is found guilty of a violation of the provisions of this section may be required by the court 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 Fifteen Dollars ($15.00) nor more than Twenty-five Dollars ($25.00) 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.

SECTION 4. AMENDATORY 57 O.S. 1991, Section 95, as amended by Section 2, Chapter 328, O.S.L. 1997 (57 O.S. Supp. 1997, Section 95), is amended to read as follows:

Section 95. A. 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 the person is sentenced, or transported by a designated representative of the sheriff, to the Department of Corrections at the Lexington Assessment and Reception Center or other location designated by the Director of the Department of Corrections. The sheriff shall deliver the person to the Department at such center together with a certified copy of the judgment and sentence from the court ordering such imprisonment, 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, and a copy of the presentence investigation report, if a report was prepared.

B. The Department shall give the sheriff a receipt for each person received into the custody of the Department at the Lexington Assessment and Reception Center. The receipt shall be filed by the sheriff in the office of the clerk of the court where the sentence was made.

SECTION 5. AMENDATORY 57 O.S. 1991, Section 138, as last amended by Section 24, Chapter 133, O.S.L. 1997 (57 O.S. Supp. 1997, Section 138), is amended to read as follows:

Section 138. A. All persons convicted of crimes committed on or after July 1, 1998, whether their sentences are for incarceration, in whole or in part, or are for a suspended sentence 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.

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.

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.

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 prior to July 1, 1998, 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; and

b. Class level corresponding credits for inmates who are sentenced for crimes committed on or after July 1, 1998, 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.

Provided, however, for inmates who are sentenced for crimes committed on or after July 1, 1998, the combined credits for all purposes cannot exceed fifteen percent (15%) of the sentence.

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.

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.

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 E 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 <u>or other assessment and reception location determined by the Director of the Department of Corrections</u>.

H. 1. For inmates who were sentenced for crimes committed prior to July 1, 1998, 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, 1998, 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. The combined awarded credits for both earned credits and achievement credits for all purposes for inmates sentenced for crimes committed on or after July 1, 1998, shall not reduce a sentence more than fifteen percent (15%).

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.

J. As of 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 as provided in this section.

SECTION 6. AMENDATORY 57 O.S. 1991, Section 332.7, as last amended by Section 23, Chapter 333, O.S.L. 1997 (57 O.S. Supp. 1997, Section 332.7), is amended to read as follows:

Section 332.7 A. For a crime committed prior to July 1, 1998, any person in the custody of the Department of Corrections shall be eligible for consideration for parole who has:

1. Completed serving one-third (1/3) of the sentence;

2. Reached at least sixty (60) years of age and also has served at least fifty percent (50%) of the time of imprisonment that would have been imposed for that offense pursuant to the applicable Truth in Sentencing matrix; provided, however, no inmate serving a sentence for crimes listed in Schedules A, S-1, S-2 or S-3 or serving a sentence of life imprisonment without parole shall be eligible to be considered for parole pursuant to this paragraph;

3. Been sentenced for an offense that is listed in Schedule A, B, C, D, D-1, S-1, S-2 or S-3 and has served eighty-five percent (85%) of the midpoint of the time of imprisonment that would have been imposed for that offense pursuant to the applicable matrix; provided, however, no inmate serving a sentence of life imprisonment without parole shall be eligible to be considered for parole pursuant to this paragraph; or

4. Been sentenced for an offense that is listed in any other schedule, served seventy-five percent (75%) of the midpoint of the time of imprisonment that would have been imposed for that offense pursuant to the applicable matrix; provided, however, no inmate serving a sentence of life imprisonment without parole shall be eligible to be considered for parole pursuant to this paragraph.

B. 1. Any inmate who has parole consideration dates calculated pursuant to subsection A of this section shall be considered at the earliest such date. Any inmate who has been considered for parole and was denied shall not be reconsidered for parole within one (1) year, except by the direction of the Pardon and Parole Board.

2. The Department of Corrections and the Pardon and Parole Board shall promulgate rules for the implementation of subsection A of this section. The rules shall include, but not be limited to, procedures for reconsideration of persons denied parole under this section and procedure for determining what sentence the person would have received under the applicable matrix.

C. For persons in the custody of the Department of Corrections for a felony committed prior to July 1, 1998, 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.

D. For a crime committed on or after July 1, 1998:

1. Any person convicted of a crime in Schedule A, B, C, D, D-1, S-1, S-2 or S-3 shall be eligible for parole consideration after serving eighty-five percent (85%) of the sentence of imprisonment imposed unless the sentence has been discharged by accumulated credits pursuant to Section 138 of this title;

2. Any person convicted of a crime in any other schedule shall be eligible for parole consideration after serving seventy-five percent (75%) of the sentence of imprisonment imposed subject to the accumulation of credits pursuant to Section 138 of this title; or

3. A person who is sixty (60) years of age or older, who has not been sentenced to life without parole or death and who has not

been convicted of a crime listed in Schedule A, S-1, S-2 or S-3, shall be eligible for parole consideration after the person has served at least fifty percent (50%) of any imposed sentence of incarceration.

The provisions of this subsection shall not apply to any person sentenced to life imprisonment without parole.

E. 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 the time period provided for in this subsection 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.

F. 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 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 reception and processing through the ~~Lexington Assessment and Reception Center~~ Department of Corrections.

G. 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.

H. 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.

I. Any person convicted of a crime committed on or after July 1, 1998, who was sentenced to postimprisonment supervision and who is granted parole while incarcerated, shall be placed under parole supervision before beginning postimprisonment supervision.

J. If a person is sentenced to consecutive sentences pursuant to the Oklahoma Community Corrections Act of county jail incarceration that requires the person to be incarcerated more than eighteen (18) months, the person shall be eligible for parole consideration after serving at least eighteen (18) months of the confinement. The local administrator for community punishment shall notify the Pardon and Parole Board of any persons who qualify for parole pursuant to this subsection.

SECTION 7. AMENDATORY 57 O.S. 1991, Section 530, as amended by Section 8, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1997, Section 530), is amended to read as follows:

Section 530. It is the intent of the State Legislature that all new prisoners sentenced to the custody of the Department of Corrections will be processed through the Lexington Assessment and Reception Center <u>or at a place determined by the Director of the Department of Corrections</u>. The ~~Center~~ <u>Department of Corrections</u> shall administer physical and psychological examinations, inventory vocational skills, and assess educational and training needs. The ~~Center~~ <u>Department of Corrections</u> shall determine initial security and custody classifications, plan for immediate or possible future assignment to an institution, community treatment center or other

alternative to incarceration authorized by law, provide orientation and instruction with respect to rules and procedures for prisoners, and perform other such activities deemed necessary by the Department of Corrections.

SECTION 8. AMENDATORY Section 14, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1997, 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 <u>or other location determined by the Director of the Department of Corrections</u>, 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 9. This act shall become effective July 1, 1998.

SECTION 10. 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.

46-2-8602 SD