SHORT TITLE: Truth in sentencing; modifying date of implementation of Oklahoma Truth in Sentencing Act. Emergency.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1327 By: Laughlin

AS INTRODUCED

An Act relating to truth in sentencing; amending 21 O.S. 1991, Section 9, as amended by Section 13, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 9), which relates to punishment of felonies; amending Sections 2, 3 and 5, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Sections 12, 13 and 15), which relate to sentencing policy and procedures; amending Section 22, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 18), which relates to second and subsequent misdemeanor offenses that remain misdemeanors; amending Section 9, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 701.17), which relates to the death penalty; amending 21 O.S. 1991, Section 1533, as last amended by Section 1, Chapter 405, O.S.L. 1997 (21 O.S. Supp. 1997, Section 1533), which relates to false personation and false assertion of authority; amending 22 O.S. 1991, Section 857, as amended by Section 17, Chapter 133, O.S.L. 1997 (22 O.S. Supp. 1997, Section 857), which relates to jury deliberations; amending Section 56, Chapter 133, O.S.L. 1997 (22 O.S. Supp. 1997, Section 987.18), which relates to assessment and evaluation; amending Section 8, Chapter 133, O.S.L. 1997, as amended by Section 2, Chapter 333, O.S.L. 1997 (22 O.S. Supp. 1997, Section 990a-1), which

relates to sentencing procedures; 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 365, as last amended by Section 28, Chapter 133, O.S.L. 1997 (57 O.S. Supp. 1997, Section 365), which relates to specialized parole; amending 57 O.S. 1991, Section 570, as amended by Section 32, Chapter 133, O.S.L. 1997 (57 O.S. Supp. 1997. Section 570), which relates to the Oklahoma Prison Overcrowding Emergency Powers Act; amending Section 612, Chapter 133, O.S.L. 1997, Section 45, Chapter 293, O.S.L. 1997, Section 28, Chapter 333, O.S.L. 1997, and Section 8, Chapter 420, O.S.L. 1997, which relate to effective dates; modifying effective date for certain provisions of the Oklahoma Truth in Sentencing Act and related provisions; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 9, as amended by Section 13, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 9), is amended to read as follows:

Section 9. A. For offenses committed on or after July 1, ~~1998~~ 2000, every offense declared to be a felony shall be punished according to the applicable sentencing level. If a specific fine is

provided for by law, the fine may be imposed as provided in subsection C of Section 64 of this title.

B. For offenses committed before July 1, ~~1998~~ 2000, except in cases where a different punishment is prescribed by this title, or by some existing provision of law, every offense declared to be a felony is punishable by a fine not exceeding One Thousand Dollars ($1,000.00), or by imprisonment in the State Penitentiary not exceeding two (2) years, or by both such fine and imprisonment.

SECTION 2. AMENDATORY Section 2, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 12), is amended to read as follows:

Section 12. A. A person committing a felony offense on or after July 1, ~~1998~~ 2000, and convicted of the offense shall be required to serve a minimum amount of the sentence of incarceration or community punishment imposed. A person convicted of crimes in Schedule A, B, C, D, D-1, S-1, S-2 or S-3 shall serve not less than eighty-five percent (85%) of the sentence of imprisonment imposed within the Department of Corrections unless eligible for parole pursuant to subsection B of Section 332.7 of Title 57 of the Oklahoma Statutes. A person convicted of crimes in the other schedules shall serve not less than seventy-five percent (75%) of the sentence of imprisonment imposed within the Department of Corrections unless eligible for parole pursuant to subsection B of Section 332.7 of Title 57 of the Oklahoma Statutes. The person shall not be eligible for earned credits which have the effect of reducing the length of sentence of imprisonment by more than fifteen percent (15%).

B. Any person committing a criminal offense on or after July 1, ~~1998~~ 2000, and sentenced by a court, shall be sentenced in accordance with the ranges of punishments established by the matrices provided for in Sections ~~598~~ 20.1 through ~~601~~ 20.4 of this ~~act~~ title.

C. This section shall not affect the power of the court to suspend or defer a sentence, if authorized by law.

SECTION 3. AMENDATORY Section 3, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 13), is amended to read as follows:

Section 13. A. The policy of this state is to sentence persons convicted of felonies pursuant to sentencing matrices. The initial matrices shall be as provided in Sections ~~598~~ 20.1 through ~~601~~ 20.4 of this ~~act~~ title. These matrices shall remain in effect until such time as new matrices are established pursuant to subsection B of this section.

B. Beginning July 1, ~~1998~~ 2000, felonies shall be classified pursuant to Section ~~6~~ 16 of this ~~act~~ title, except for Schedule A, and shall be punished as provided by the sentencing matrices in accordance with the application of any sentencing enhancers established by the Oklahoma Truth in Sentencing Act.

1. Beginning ~~1999~~ 2001 and each year thereafter, by December 1 the Department of Corrections shall submit to the Oklahoma Sentencing Commission or successor agency a report of projected financial and bed space impact that will include an assessment of any need for additional resources for bed space under current sentencing ranges.

2. By January 15 of the year following receipt of the assessment of need by the Department of Corrections, the Commission or successor agency shall certify to the Governor and the Legislature whether or not changes are needed in either the matrices or in correctional facility capacity to ensure that offenders serve the minimum percentage amount of incarceration required by the Oklahoma Truth in Sentencing Act. This report shall include fiscal impact statements of the cost of any proposed change in correctional capacity, and an alternative matrix and fiscal impact therefor.

3. The Commission or successor agency, by rule, shall promulgate one or more adjusted matrices to take effect July 1 of the year that certification is made to the Legislature pursuant to paragraph 2 of this subsection, in the event the Legislature does not provide the resources appropriate for the additional capacity needed by the Department of Corrections or other sources of revenue do not become available.

4. A new matrix, if necessary, shall be promulgated in accordance with the Administrative Procedures Act, except as provided in this section. The Commission or successor agency shall not adopt a new matrix by emergency rule except as provided in paragraph 5 of this subsection. Any permanent rule adopting a new matrix shall be submitted to the Governor within a sufficient time so that, if approved by the Governor, the rule shall be submitted to the Legislature by April 1 of the year in which the Commission or successor agency wishes to implement the matrix. If the Legislature does not either disapprove the matrix before the sine die adjournment of the legislative session in which the rule was submitted or provide total funding for needed resources, the matrix shall become effective on July 1 of the same year. If the Governor disapproves the rule or the Legislature provides partial funding for needed resources, the Commission or successor agency, by rule, shall promulgate a revised adjusted matrix.

5. If the revised adjusted matrix cannot be promulgated and submitted to the Legislature by April 1, the Commission or successor agency may promulgate the revised adjusted matrix by emergency rule.

6. Any matrix adopted by the Commission or successor agency, which is not disapproved, shall be published as an appendix to ~~Title 21 of the Oklahoma Statutes~~ this title.

SECTION 4. AMENDATORY Section 5, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 15), is amended to read as follows:

Section 15. A. On and after July 1, ~~1998~~ 2000, criminal offenses shall be punished as provided by the sentencing matrices and in accordance with the application of any sentencing enhancers authorized by the Oklahoma Truth in Sentencing Act.

B. For purposes of sentencing:

1. The main matrix shall be applied in felony cases for crimes that are classified pursuant to Section ~~6~~ 16 of this ~~act~~ title as a Schedule A, Schedule B, Schedule C, Schedule D, Schedule D-1, Schedule D-2, Schedule E, Schedule F, Schedule G, or Schedule H crime committed on or after July 1, ~~1998~~ 2000;

2. The sentencing matrix entitled "Intoxicant Crimes Involving a Vehicle Matrix" shall be applied in cases which are intoxicant crimes involving a vehicle that are classified as Schedule I-1, I-2, or Schedule I-3 crimes committed on or after July 1, ~~1998~~ 2000;

3. The sentencing matrix entitled "Drug Crimes Matrix" shall be applied in cases involving controlled dangerous substance offenses that are classified as Schedule N-1, Schedule N-2, Schedule N-3, Schedule N-4, or Schedule N-5 crimes committed on or after July 1, ~~1998~~ 2000; and

4. The sentencing matrix entitled "Sex Crimes Matrix" shall be applied in cases involving sexual offenses that are classified as Schedule S-1, Schedule S-2, Schedule S-3, or Schedule S-4 crimes.

C. The ranges of punishment for each level in the schedules shall be established as provided in Section ~~6~~ 16 of this ~~act~~ title. Provided, however, Schedule A shall be subject to the criminal provisions of Sections 701.7 through 701.16 of ~~Title 21 of the Oklahoma Statutes~~ this title.

D. A sentencing matrix is a crime severity and criminal history classification tool. The sentencing matrix determines crime severity of the current offense of conviction according to sentencing level. The sentencing level classifies the severity of

the circumstances of the offense and the criminal history of the offender.

E. A sentencing matrix, except for Schedule A, defines the possible terms of confinement or community punishment.

F. A sentencing matrix does not establish fines or other conditions of a sentence. Fines for the commission of a criminal offense shall be as provided by law and conditions of sentence dispositions are provided for by Section 991a of Title 22 of the Oklahoma Statutes.

G. The sentences provided for in the matrices shall be:

1. Field 1 - Sentencing to the Department of Corrections;

2. Field 2 - Sentencing to either the Department of Corrections or community punishment, at the option of the court. If the sentence is to community punishment, sentencing shall be pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes or subsection B of Section ~~46~~ 987.8 of ~~this act~~ Title 22 of the Oklahoma Statutes;

3. Field 3 - Sentencing to community punishment pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes or subsection B of Section ~~46~~ 987.8 of ~~this act~~ Title 22 of the Oklahoma Statutes; or

4. Field 4 - Sentencing to community punishment pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes or subsection B of Section ~~46~~ 987.8 of ~~this act~~ Title 22 of the Oklahoma Statutes.

SECTION 5. AMENDATORY Section 22, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 18), is amended to read as follows:

Section 18. A. Unless otherwise provided by law, for any crime listed in subsection B of this section that is originally a misdemeanor and that, prior to July 1, ~~1998~~ 2000, would be a felony for a second or subsequent offense, the crime shall remain a misdemeanor for second and subsequent offenses committed on or after July 1, ~~1998~~ 2000.

B. This section shall apply to the following crimes:

1. Violation of the Consumer Protection Act, as provided for in Section 761.1 of Title 15 of the Oklahoma Statutes;

2. Administration of certain substances or performance of certain surgical procedures to alter appearance of livestock, as provided for in Section 1229 of ~~Title 21 of the Oklahoma Statutes~~ this title;

3. Unlawful reproduction for sale of sound recording or audiovisual work, as provided for in Section 1976 of ~~Title 21 of the Oklahoma Statutes~~ this title;

4. Unlawful sale or offer for sale of sound recording, as provided for in Section 1977 of ~~Title 21 of the Oklahoma Statutes~~ this title;

5. Unlawful transfer of article or sound recording or performance for unauthorized sale, as provided for in Section 1978 of ~~Title 21 of the Oklahoma Statutes~~ this title;

6. Advertisement, rental, sale, resale, distribution or circulation of article without actual true name of manufacturer, as provided for in Section 1979 of ~~Title 21 of the Oklahoma Statutes~~ this title;

7. Counterfeit labels, as provided for in Section 1980 of ~~Title 21 of the Oklahoma Statutes~~ this title;

8. Possession of marihuana, as provided for in Section 2-402 of Title 63 of the Oklahoma Statutes;

9. Violating tax code by shipping, transporting, receiving, possessing, selling, distributing, or purchasing contraband cigarettes, as provided for in Section 349 of Title 68 of the Oklahoma Statutes;

10. Violating tax code by shipping, transporting, receiving, possessing, selling, distributing, or purchasing contraband tobacco products, as provided for in Section 426 of Title 68 of the Oklahoma Statutes; and

11. Violating sales tax code by improper permit to do business, as provided for in Section 1364 of Title 68 of the Oklahoma Statutes.

SECTION 6. AMENDATORY Section 9, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 701.17), is amended to read as follows:

Section 701.17 Nothing in the Oklahoma Truth in Sentencing Act shall abrogate or affect the punishment by death in all crimes punishable by death before July 1, ~~1998~~ 2000, or made punishable by death on or after July 1, ~~1998~~ 2000.

SECTION 7. AMENDATORY 21 O.S. 1991, Section 1533, as last amended by Section 1, Chapter 405, O.S.L. 1997 (21 O.S. Supp. 1997, Section 1533), is amended to read as follows:

Section 1533. A. Except as provided in subsection B of this section, every person who falsely personates any public officer, civil or military, any fireman, any law enforcement officer, any emergency medical technician or other emergency medical care provider, or any private individual having special authority by law to perform any act affecting the rights or interests of another, or who assumes, without authority, any uniform or badge by which such officers or persons are usually distinguished, and in such assumed character does any act whereby another person is injured, defrauded, harassed, vexed or annoyed, upon conviction, is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding Two Thousand Dollars ($2,000.00), or by both such fine and imprisonment.

B. Every person who falsely personates any public officer or any law enforcement officer in connection with or relating to any sham legal process shall, upon conviction, be guilty of a felony. Beginning July 1, ~~1998~~ 2000, a violation of this subsection shall be a schedule F felony. The fine for a violation of this subsection shall not exceed Five Thousand Dollars ($5,000.00).

C. Every person who falsely asserts authority of law not provided for by federal or state law in connection with any sham legal process shall, upon conviction, be guilty of a felony. Beginning July 1, ~~1998~~ 2000, a violation of this subsection shall be a schedule F felony. The fine for a violation of this subsection shall not exceed Five Thousand Dollars ($5,000.00).

D. Every person who, while acting falsely in asserting authority of law, attempts to intimidate or hinder a public official or law enforcement officer in the discharge of official duties by means of threats, harassment, physical abuse, or use of sham legal process, shall be guilty of a felony. Beginning July 1, ~~1998~~ 2000, a violation of this subsection shall be a schedule F felony. The fine for a violation of this subsection shall not exceed Five Thousand Dollars ($5,000.00).

E. Any person who, without authority under federal or state law, acts as a supreme court justice, a district court judge, an associate district judge, a special judge, a magistrate, a clerk of the court or deputy, a notary public, a juror or other official holding authority to determine a controversy or adjudicate the rights or interests of others, or signs a document in such capacity, shall be guilty of a felony. Beginning July 1, ~~1998~~ 2000, a violation of this subsection shall be a schedule F felony. The fine for a violation of this subsection shall not exceed Five Thousand Dollars ($5,000.00).

F. Every person who uses any motor vehicle or motor-driven cycle usually distinguished as a law enforcement vehicle or equips any motor vehicle or motor-driven cycle with any spot lamps, audible sirens, or flashing lights, in violation of Sections 12-217, 12-218 or 12-227 of Title 47 of the Oklahoma Statutes for the purpose of falsely personating a law enforcement officer and who in such assumed character commits any act whereby another person is injured, defrauded, harassed, vexed or annoyed shall, upon conviction, be

guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding one (1) year, or by a fine not exceeding Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

G. As used in this section:

1. "Sham legal process" means the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued, whether or not the instrument is produced for inspection or actually exists, and purports to do any of the following:

a. to be a summons, subpoena, judgment, arrest warrant, search warrant, or other order of a court recognized by the laws of this state, a law enforcement officer commissioned pursuant to state or federal law or the law of a federally recognized Indian tribe, or a legislative, executive, or administrative agency established by state or federal law or the law of a federally recognized Indian tribe,

b. to assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of any person or property, or

c. to require or authorize the search, seizure, indictment, arrest, trial, or sentencing of any person or property; and

2. "Lawfully issued" means adopted, issued, or rendered in accordance with the applicable statutes, rules, regulations, and ordinances of the United States, a state, or a political subdivision of a state.

H. It shall not be a defense to a prosecution under subsection B, C, D or E of this section that:

1. The recipient of the sham legal process did not accept or believe in the authority falsely asserted in the sham legal process;

2. The person violating subsection B, C, D or E of this section does not believe in the jurisdiction or authority of this state or of the United States government; or

3. The office the person violating subsection B, C, D or E of this section purports to hold does not exist or is not an official office recognized by state or federal law.

SECTION 8. AMENDATORY 22 O.S. 1991, Section 857, as amended by Section 17, Chapter 133, O.S.L. 1997 (22 O.S. Supp. 1997, Section 857), is amended to read as follows:

Section 857. After hearing the charge, the jury may either decide in court, or may retire for deliberation. The jury shall determine whether the defendant is guilty or not guilty, but shall not determine the sentence for persons convicted of crimes committed on or after July 1, ~~1998~~ 2000, unless the trial is for the offense of first degree murder. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

SECTION 9. AMENDATORY Section 56, Chapter 133, O.S.L. 1997 (22 O.S. Supp. 1997, Section 987.18), is amended to read as follows:

Section 987.18 A. On and after July 1, ~~1998~~ 2000, in lieu of a presentence investigation provided in Section 982 of ~~Title 22 of the Oklahoma Statutes~~ this title, for each community sentence case the judge shall, prior to making a determination of punishment and imposing any community punishment or service authorized by law, or imposing any other sentence authorized by law which would receive

services from the local system, order an assessment and evaluation of the defendant to assist the court in determining the offender's primary treatment need, appropriate community punishment, and potential risk to public safety if the offender is sentenced in the community.

B. The assessment and evaluation shall be utilized by the court prior to determining any punishment for the offense. The purpose of the assessment shall be to identify the extent of the defendant's deficiencies and needs, the potential risk to public safety, and the appropriateness of various community punishments.

C. The defendant shall be required to complete a standardized assessment and evaluation test which shall be scored by an appropriately trained person designated by the court or pursuant to a service agreement with the local community sentencing system. Any defendant lacking sufficient skills to read, comprehend or otherwise complete the assessment and evaluation test shall have appropriate assistance or may have an oral assessment and evaluation based upon the standardized test form.

D. The failure or refusal of the defendant to be assessed and evaluated shall not prohibit the court from sentencing the defendant.

SECTION 10. AMENDATORY Section 8, Chapter 133, O.S.L. 1997, as amended by Section 2, Chapter 333, O.S.L. 1997 (22 O.S. Supp. 1997, Section 990a-1), is amended to read as follows:

Section 990a-1. A. When sentencing an offender for a crime committed on or after July 1, ~~1998~~ 2000, a court shall utilize the sentencing procedures provided for in this section.

B. When considering any presentence investigation conducted, the court shall consider the findings of any alleged offense enhancers provided for by subsection A of Section ~~7 of the Oklahoma Truth in Sentencing Act~~ 17 of Title 21 of the Oklahoma Statutes or any alleged prior record enhancers provided for by subsection B of

Section ~~7 of the Oklahoma Truth in Sentencing Act~~ 17 of Title 21 of the Oklahoma Statutes, if the findings have been established by clear and convincing evidence.

C. The court shall determine the sentence based on the utilization of the following procedures on the applicable sentencing matrix:

1. First, the court shall determine the schedule of the current offense of conviction on the applicable matrix;

2. Second, the court shall determine the midpoint within the range for the first level of the schedule. The court shall use the midpoint value plus or minus an amount not to exceed twenty percent (20%) of the midpoint value to determine the amount of time to be assessed at level 1;

3. Third, the court shall proceed to the appropriate level of punishment based on the finding of any offense enhancers or prior record enhancers determined by subsection A of this section; and

4. Fourth, the court may deviate from the sentence arrived at pursuant to paragraphs 2 and 3 of this subsection if the sentence pronounced is within the range allowed for the applicable level. The court must articulate a reason for the deviation in the record. A deviation in sentencing shall be subject to appeal by either the state or the defendant, unless the deviation is agreed to by both the defendant and the state.

D. 1. For Field 2, 3 or 4, when the offender is sentenced to community punishment, the sentencing court shall pronounce at the sentencing hearing the terms and conditions of the sentence.

2. For Field 1 or 2, when the offender is sentenced to a term of imprisonment within the Department of Corrections, the sentencing court shall pronounce at the sentencing hearing the terms and conditions of the sentence.

E. The court in determining the appropriate terms and conditions of a sentence shall consider those terms and conditions

authorized in subsection B of Section ~~11 of this act~~ 987.8 of this title and punishments authorized for a community sentence. The terms and conditions of a deferred sentence, suspended sentence, split sentence, or postimprisonment supervision shall be provided for in the Uniform Judgment and Sentence form or shall comply with Section 991b of ~~Title 22 of the Oklahoma Statutes~~ this title.

F. Prior to entering the sentence, the court shall consider, but shall not be required to state for the record, the following factors:

1. The prior criminal record of the offender with more weight given to convictions for crimes of violence, crimes against persons, and to those of the same nature as the current offense;

2. Whether the victim in the present case was physically harmed;

3. The restitution for bodily injury or property damage to the victim in the present case;

4. The culpability of the offender as indicated by factors such as the role of the offender in the offense, motive, and profit received;

5. Whether a suspended or deferred sentence will provide appropriate punishment of the offense;

6. The educational background and literacy, or any condition of chemical dependency, of the person being sentenced, together with sentencing options which would correct any deficiencies;

7. The demeanor of the offender; and

8. Any other evidence relevant to sentencing the offender.

G. The court shall impose the sentence. When a court enters a sentence in any criminal case in this state, the sentence shall be imposed pursuant to the Uniform Judgment and Sentence form, as promulgated by the Oklahoma Court of Criminal Appeals pursuant to its rulemaking authority, which shall include the findings of the sentencing court at the time of sentencing. An offender profile and

offense profile form shall be developed by the Oklahoma Sentencing Commission to ensure uniform data collection of offenders and offenses throughout the State of Oklahoma. District attorneys shall be required to submit additional profile data about the offender on a form promulgated by the Oklahoma Sentencing Commission to the Oklahoma Sentencing Commission and the Department of Corrections within twenty (20) days of judgment and sentence.

SECTION 11. 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~~ 2000, 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~~ 1999, 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~~ 1999, 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~~ 2000, 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~~ chair, 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.

H. 1. For inmates who were sentenced for crimes committed prior to July 1, ~~1998~~ 2000, 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~~ 2000, 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~~ 2000, 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 12. 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~~ 2000, 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~~ 2000, 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~~ 2000:

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~~ 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.

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~~ 2000, 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 13. AMENDATORY 57 O.S. 1991, Section 365, as last amended by Section 28, Chapter 133, O.S.L. 1997 (57 O.S. Supp. 1997, Section 365), is amended to read as follows:

Section 365. A. Persons in the custody of the Department of Corrections sentenced for crimes committed prior to July 1, ~~1998~~ 2000, who meet the following guidelines may be considered by the Pardon and Parole Board for a specialized parole:

1. a. who are within one (1) year of projected release date and are serving a sentence for a crime listed in Schedule A, B, C, D or D-1 on the main sentencing matrix or S-1, S-2 or S-3 on the sex crimes matrix; or

   b. who are within two (2) years of projected release date and are serving a sentence for an offense that is in a different schedule of the main matrix or is on the drug crimes or intoxicant crimes involving a vehicle matrix; and

2. Who have completed at least one of the following:

   a. general education diploma, or

   b. adult literacy program, or

   c. residential substance abuse program, or

   d. participation in a prison public works program for ninety (90) consecutive days, or

   e. a vocational-technical education program, or

f. other educational or rehabilitation program available in the department; and

3. Who are not incarcerated for an offense for which parole is prohibited pursuant to law.

B. Upon an inmate becoming eligible for specialized parole 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 the inmate during confinement in the custody of the Department of Corrections.

C. Upon a favorable finding by the Pardon and Parole Board, the Board shall recommend to the Governor that the inmate be placed on specialized parole. If approved by the Governor, notification shall be made to the Department of Corrections that said inmate has been placed on specialized parole.

D. Prior to the placement of an inmate on specialized parole, the Pardon and Parole Board shall provide written notification to the sheriff and district attorney of the county in which any person on specialized parole 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 specialized parole within the county or incorporated city or town. The Board also shall provide written notification of the placement of the person on specialized parole 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 Board shall not give the address of the inmate to any victim of the crime for which the inmate was convicted.

SECTION 14. AMENDATORY 57 O.S. 1991, Section 570, as amended by Section 32, Chapter 133, O.S.L. 1997 (57 O.S. Supp. 1997, Section 570), is amended to read as follows:

Section 570. Sections 570 through 576 of this title shall be known and may be cited as the "Oklahoma Prison Overcrowding Emergency Powers Act". The provisions of the Oklahoma Prison Overcrowding Emergency Powers Act shall apply only to persons sentenced for crimes committed before July 1, ~~1998~~ 2000.

SECTION 15. AMENDATORY Section 612, Chapter 133, O.S.L. 1997, is amended to read as follows:

Section 612. The provisions of Sections 1 through 25, 27, ~~32,~~ 33, 46 through 50, 54, 56 through 62, 64 through 66, 68 through 75, 85 through 603, 607~~,~~ and 610 ~~and 611 of this act~~, Chapter 133, O.S.L. 1997, shall become effective July 1, ~~1998~~ 2000.

SECTION 16. AMENDATORY Section 45, Chapter 293, O.S.L. 1997, is amended to read as follows:

Section 45. Sections 36 and 38 ~~of this act~~, Chapter 293, O.S.L. 1997, shall become effective July 1, ~~1998~~ 2000.

SECTION 17. AMENDATORY Section 28, Chapter 333, O.S.L. 1997, is amended to read as follows:

Section 28. Sections 1, 2, 4, 5, 11, 12, 15, 17, 18 and 19 ~~of this act~~, Chapter 333, O.S.L. 1997, shall become effective July 1, ~~1998~~ 2000.

SECTION 18. AMENDATORY Section 8, Chapter 420, O.S.L. 1997, is amended to read as follows:

Section 8. The provisions of Sections 2 and 5 ~~of this act~~, Chapter 420, O.S.L. 1997, shall become effective July 1, ~~1998~~ 2000.

SECTION 19. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-1854 NP