

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2416

By: Wilt and Peterson

COMMITTEE SUBSTITUTE

An Act relating to inmate lawsuits; amending 12 O.S. 2001, Section 95, which relates to limitations of actions; establishing limitation for certain actions filed by inmates; amending 12 O.S. 2001, Section 397, which relates to prisoners as witnesses or complaining or defending parties; requiring court to order payment to custodian of prisoner for costs of transportation of prisoner; prohibiting waiver of requirement to order payment of costs; amending 12 O.S. 2001, Section 1571, which relates to replevin exempting property held by jail; amending 12 O.S. 2001, Section 1653, which relates to venue for declaratory judgment actions; specifying venue of certain actions against Department of Corrections and Board of Corrections; amending 12 O.S. 2001, Section 1751, which relates to suits authorized under small claims procedure; exempting claims by inmates; amending 12 O.S. 2001, Section 2003.1, which relates to commencement of actions by inmates in penal institutions; requiring certain documents be attached to petition; modifying requirements for proceeding in forma pauperis; prohibiting the action from commencing upon certain determinations by the court; amending 12 O.S. 2001, Section 2004, which relates to service of process; prohibiting inmate from serving process; amending 57 O.S. 2001, Section 566, which relates to dismissal of civil actions initiated by inmates; authorizing loss of earned credits by inmate upon submission of frivolous or malicious claim; requiring findings of fact and order of the court; authorizing review and recommendation by Office of Attorney General under certain circumstances; authorizing disciplinary hearing; amending 57 O.S. 2001, Section 566.1, which relates to payments and distributions from damage awards; stating funds deposited shall not be subject to attachment and garnishment procedures; requiring inmate or attorney of the inmate to provide notice regarding settlement deposit; establishing court cost payment schedule and procedures for civil actions by inmates; authorizing prisoner to pay sooner than required; authorizing dismissal of action for failure to pay fees and costs if funds are available; providing exception if prisoner is indigent; specifying information to be provided in affidavit; authorizing verification of financial information given by prisoner; stating what court shall consider for determining allegation of poverty; authorizing hearing; providing that Department of Corrections and sheriffs may adopt

prisoner grievance procedures; requiring exhaustion of grievance procedure; stating procedures to be followed during grievance procedure; limiting access to certain documents; establishing time limit for filing civil action regarding adverse decision in grievance process; limiting access of prisoners to certain records; prohibiting default judgment by prisoner; establishing venue for certain actions; requiring notification of Pardon and Parole Board of certain lawsuits filed by prisoners; authorizing administrative fee; authorizing stay of civil proceedings filed by prisoner under certain circumstances; authorizing special report; amending 75 O.S. 2001, Section 250.4, which relates to exemption from the Administrative Procedures Act; exempting Department of Corrections from Article I of the Administrative Procedures Act; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 95, is amended to read as follows:

Section 95. Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:

1. Within five (5) years: An action upon any contract, agreement, or promise in writing;

2. Within three (3) years: An action upon a contract express or implied not in writing; an action upon a liability created by statute other than a forfeiture or penalty; and an action on a foreign judgment;

3. Within two (2) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud - the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud;

4. Within one (1) year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment; an action upon a statute for penalty or forfeiture, except where the statute imposing it prescribes a different limitation;

5. An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest, or in any case whatever required by the statute, can only be brought within five (5) years after the cause of action shall have accrued;

6. An action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse incidents or exploitation as defined by Section ~~845~~ 7102 of Title ~~24~~ 10 of the Oklahoma Statutes or incest can only be brought within the latter of the following periods:

- a. within two (2) years of the act alleged to have caused the injury or condition, or
- b. within two (2) years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act or that the act caused the injury for which the claim is brought.

Provided, however, that the time limit for commencement of an action pursuant to this paragraph is tolled for a child until the child reaches the age of eighteen (18) years. No action may be brought against the alleged perpetrator or the estate of the alleged perpetrator after the death of such alleged perpetrator. An action pursuant to this paragraph must be based upon objective verifiable evidence in order for the victim to recover damages for injuries suffered by reason of such sexual abuse, exploitation, or incest. The evidence should include both proof that the victim had psychologically repressed the memory of the facts upon which the claim was predicated and that there was corroborating evidence that

the sexual abuse, exploitation, or incest actually occurred. The victim need not establish which act in a series of continuing sexual abuse incidents, exploitation incidents, or incest caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse, exploitation, or incest. Provided further, any action based on intentional conduct specified in paragraph 6 of this section must be commenced within twenty (20) years of the victim reaching the age of eighteen (18);

7. An action to establish paternity and to enforce support obligations can be brought any time before the child reaches the age of eighteen (18);

8. An action to establish paternity can be brought by a child if commenced within one (1) year after the child reaches the age of eighteen (18);

9. Court-ordered child support is owed until it is paid in full and it is not subject to a statute of limitations; ~~and~~

10. An action filed by an inmate in the custody of the State of Oklahoma, a contractor of the State of Oklahoma or a political subdivision of the State of Oklahoma or by a person based upon facts that occurred while the person was an inmate filed against the State of Oklahoma, a contractor of the State of Oklahoma or a political subdivision of the State of Oklahoma, to include the revocation of earned credits, shall be commenced within one (1) year after the cause of action shall have accrued; and

11. An action for relief, not hereinbefore provided for, can only be brought within five (5) years after the cause of action shall have accrued.

SECTION 2. AMENDATORY 12 O.S. 2001, Section 397, is amended to read as follows:

Section 397. A. A person confined in any prison in this state may by order of any court of record, be required to be produced for

oral examination as a witness by the court in the county where he is imprisoned, but in all other cases his examination must be by deposition.

B. A Any person or a prisoner confined in any prison or jail in this state who is the complaining party or defending party in any form of a civil action ~~brought pursuant to this title~~ may apply for a Writ of Habeas Corpus for the purpose of ~~appearing~~ having the prisoner appear before the court. If the court issues such writ, it shall be issued to the custodian of the prisoner, shall order the custodian to be paid for all costs of transportation and shall order the prisoner to be delivered to the court ~~the prisoner has~~ named in the writ.

C. If upon application ~~by the prisoner or the prisoner's attorney,~~ the court issues a Writ of Habeas Corpus as provided in subsection B of this section, it shall order the person applying for such writ or other appropriate party to pay to the custodian executing the writ all costs of transporting the prisoner to and from the court. No court shall waive the requirement to pay the costs of transportation to the custodian. The writ shall also serve as a judgment against the prisoner, if the prisoner is the party ordered to pay transportation costs or was the party seeking the writ, and may be enforced by the detaining governmental unit without further order of any court for a period of five (5) years after the date of the writ. The custodian executing the release shall notify the prisoner and the court, at the time of delivery, of the costs of transportation.

SECTION 3. AMENDATORY 12 O.S. 2001, Section 1571, is amended to read as follows:

Section 1571. A. The plaintiff in an action to recover the possession of specific personal property may claim the delivery of the property at the commencement of suit, as provided herein.

1. The petition must allege facts which show:

- a. a description of the property claimed,
- b. that the plaintiff is the owner of the property or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property,
- c. that the property is wrongfully detained by the defendant,
- d. the actual value of the property, provided that when several articles are claimed, the value of each shall be stated as nearly as practicable,
- e. that the property was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this chapter, or any other mesne or final process issued against said plaintiff; or, if taken in execution or on any order or judgment against the plaintiff, that it is exempt by law from being so taken, ~~and~~
- f. the prayer for relief requests that the court issue an order for the immediate delivery of the property,
- g. that the property claimed is not being detained or held for any reason at any municipal or county jail, Department of Corrections facility or private prison facility, or by any employee of such a facility, and
- h. the petitioner was not a prisoner in jail or prison at the time the property was detained or held.

2. The above allegations are verified by the party or, when the facts are within the personal knowledge of his agent or attorney and this is shown in the verification, by said agent or attorney.

3. A notice shall be issued by the clerk and served on the defendant with the summons which shall notify the defendant that an order of delivery of the property described in the petition is sought and that the defendant may object to the issuance of such an order by a written objection which is filed with the clerk and delivered or mailed to the plaintiff's attorney within five (5) days of the service of the summons. In the event that no written objection is filed within the five-day period, no hearing is necessary and the court clerk shall issue the order of delivery. Should a written objection be filed within the five-day period specified, the court shall, at the request of either party, set the matter for prompt hearing. At such hearing the court shall proceed to determine whether the order for prejudgment delivery of the property should issue according to the probable merit of plaintiff's petition. Provided, however, that no order of delivery may be issued until an undertaking has been executed pursuant to Section 1573 of this title.

Nothing contained in this act shall prohibit a party from waiving his right to a hearing or from voluntarily delivering the goods to the party seeking them before the commencement of the proceedings or at any time after institution thereof.

B. Where the notice that is required by subsection A of this section cannot be served on the defendant but the judge finds that a reasonable effort to serve him was made and at the hearing the plaintiff has shown the probable truth of the allegations in his petition, the court may issue an order for the prejudgment delivery of the property. If an order for the delivery of the property is issued without actual notice being given the defendant, the defendant may move to have said order dissolved and, if he does not have possession of the property, for a return of the property. Notice of said motion with the date of the hearing shall be served upon the attorney for the plaintiff in the action. The motion shall

be heard promptly, and in any case within five (5) days after the date that it is filed. The court must grant the motion unless, at the hearing on defendant's motion, the plaintiff proves the probable truth of the allegations contained in his petition. If said notice is filed before the sheriff turns the property over to the plaintiff, the sheriff shall retain control of the property pending the hearing on the motion.

C. The court may, on request of the plaintiff, order the defendant not to conceal, damage or destroy the property or a part thereof and not to remove the property or a part thereof from the state or county, pending the hearing on plaintiff's request for an order for the prejudgment delivery of the property, and said order may be served with the summons.

SECTION 4. AMENDATORY 12 O.S. 2001, Section 1653, is amended to read as follows:

Section 1653. When a declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. The venue of said action shall be established by existing statutes; provided, however, where the action involves an individual defendant the venue shall be in the county of his or her residence or where he or she may be served with summons. If such action involves more than one such individual defendant, who reside in different counties, the venue shall be in any county where any of such defendants reside or may be served with summons. Where the action has as a defendant the Department of Corrections, the Board of Corrections or any of the agents, officers or employees of the Department or Board, the venue shall be in the county of the official residence of the Department or Board. In any proceeding which involves the validity of a municipal ordinance or regulation, such municipality shall be made a party, and shall be entitled to be heard, and if a statute or

regulation is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard.

SECTION 5. AMENDATORY 12 O.S. 2001, Section 1751, is amended to read as follows:

Section 1751. A. The following suits may be brought under the small claims procedure:

1. Actions for the recovery of money based on contract or tort, including subrogation claims, but excluding libel or slander, in which the amount sought to be recovered, exclusive of attorneys fees and other court costs, does not exceed Four Thousand Five Hundred Dollars (\$4,500.00);

2. Actions to replevy personal property the value of which does not exceed Four Thousand Five Hundred Dollars (\$4,500.00). If the claims for possession of personal property and to recover money are pled in the alternative, the joinder of claims is permissible if neither the value of the property nor the total amount of money sought to be recovered, exclusive of attorneys fees and other costs, does exceed Four Thousand Five Hundred Dollars (\$4,500.00); and

3. Actions in the nature of interpleader, as provided for in Section 2022 of this title, in which the value of the money which is the subject of such action does not exceed Four Thousand Five Hundred Dollars (\$4,500.00).

B. No action may be brought under the small claims procedure by any collection agency, collection agent, or assignee of a claim, except that an action may be brought against an insurer or third-party administrator by a health care provider as that term is defined in Section 6552 of Title 36 of the Oklahoma Statutes, who is an assignee of benefits available under an accident and health insurance policy, trust, plan, or contract.

C. In those cases which are uncontested, the amount of attorneys fees allowed shall not exceed ten percent (10%) of the judgment.

D. No action may be brought under the small claims procedure for any alleged claim against any city, county or state agency, or employee of a city, county or state agency, if the claim alleges matters arising from incarceration, probation, parole or community supervision.

E. No action by a plaintiff who is currently incarcerated in any jail or prison in the State may be brought against any person or entity under the small claims procedure.

SECTION 6. AMENDATORY 12 O.S. 2001, Section 2003.1, is amended to read as follows:

Section 2003.1

COMMENCEMENT OF ACTIONS BY INMATES ~~OF PENAL INSTITUTIONS~~

A. Petitions, motions, or other pleadings filed by an inmate ~~of a penal institution~~ as defined in paragraph 2 of subsection B of Section ~~2~~ 566 of ~~this act~~ Title 57 of the Oklahoma Statutes appearing pro se shall be on forms approved by the district court and supplied without charge by the clerk of the district court upon request.

B. The following information shall be supplied by an inmate who is seeking relief in a civil action:

1. Plaintiff's full name;
2. Place of plaintiff's residence;
3. Name(s) of defendant(s);
4. Place(s) of defendant(s) ~~residence~~ employment;
5. Title and position of (each) defendant;
6. Whether the defendant(s) was (were) acting under color of state law at the time the claim alleged in the complaint arose;
7. Brief statement of the facts;

8. Grounds upon which plaintiff bases allegations that constitutional rights, privileges, or immunities have been violated, together with the facts which support each of these grounds;

9. A statement of prior judicial and administrative relief sought, copies of which shall be attached to the petition; and

10. A statement of the relief requested.

C. In all cases in which the petitioner, movant, or plaintiff is an inmate of a penal institution and desires to proceed in forma pauperis, ~~in addition to the proof of poverty required by subsection C of Section 152 of Title 28 of the Oklahoma Statutes, the inmate shall submit a certificate executed by an authorized officer of the institution in which the inmate is confined stating the amount of money or securities on deposit to the inmate's credit in any account in the institution. The certificate may be considered by the court in acting on the motion for leave to proceed in forma pauperis. In the absence of exceptional circumstances, leave to proceed in forma pauperis may be denied if the value of the money and securities in petitioner's, movant's, or plaintiff's institutional account exceeds Two Hundred Dollars (\$200.00) be submitted.~~

D. If the court determines that the filing is a noncomplying petition, motion, or other pleading filed by an inmate in a penal institution appearing pro se, the action may not proceed, and it shall be returned together with a copy of this statute and a statement of the reason or reasons for its return.

E. If the defendant claims either qualified or absolute immunity in its answer, the court may order the plaintiff to file a detailed reply to the answer pursuant to subsection A of Section 2007 of ~~Title 12 of the Oklahoma Statutes~~ this title.

F. The Administrative Office of the Courts shall adopt forms to be used by inmates of penal institutions appearing pro se pursuant to this section.

SECTION 7. AMENDATORY 12 O.S. 2001, Section 2004, is amended to read as follows:

Section 2004.

PROCESS

A. SUMMONS: ISSUANCE. Upon filing of the petition, the clerk shall forthwith issue a summons. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

B. SUMMONS: FORM.

1. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise, the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of failure to appear, judgment by default will be rendered against the defendant for the relief demanded in the petition.

2. A judgment by default shall not be different in kind from or exceed in amount that prayed for in either the demand for judgment or in cases not sounding in contract in a notice which has been given the party against whom default judgment is sought. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his or her pleadings.

C. BY WHOM SERVED: PERSON TO BE SERVED.

1. SERVICE BY PERSONAL DELIVERY.

a. At the election of the plaintiff, process, other than a subpoena, shall be served by a sheriff or deputy sheriff, a person licensed to make service of process in civil cases, or a person specially appointed for that purpose. The court shall freely make special

appointments to serve all process, other than a subpoena, under this paragraph.

- b. A summons to be served by the sheriff or deputy sheriff shall be delivered to the sheriff by the court clerk or an attorney of record for the plaintiff. When a summons, subpoena, or other process is to be served by the sheriff or deputy sheriff of another county, the court clerk shall mail it, together with his voucher for the fees collected for the service, to the sheriff of that county. The sheriff shall deposit the voucher in the Sheriff's Service Fee Account created pursuant to Section 514.1 of Title 19 of the Oklahoma Statutes. The sheriff or deputy sheriff shall serve the process in the manner that other process issued out of the court of the sheriff's own county is served. A summons to be served by a person licensed to make service of process in civil cases or by a person specially appointed for that purpose shall be delivered by an attorney of record for the plaintiff to such person.

- c. Service shall be made as follows:

- (1) Upon an individual other than an infant who is less than fifteen (15) years of age or an incompetent person, by delivering a copy of the summons and of the petition personally or by leaving copies thereof at the person's dwelling house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older or by delivering a copy of the summons and of the petition to an agent authorized by appointment or by law to receive service of process;

- (2) Upon an infant who is less than fifteen (15) years of age, by serving the summons and petition personally and upon either of the infant's parents or guardian, or if they cannot be found, then upon the person having the care or control of the infant or with whom the infant lives; and upon an incompetent person by serving the summons and petition personally and upon the incompetent person's guardian;
- (3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the petition to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant;
- (4) Upon the United States or an officer or agency thereof in the manner specified by Federal Rule of Civil Procedure 4;
- (5) Upon a state, county, school district, public trust or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the petition to the officer or individual designated by specific statute; however, if there is no statute, then upon the chief executive officer or a clerk, secretary, or other official

whose duty it is to maintain the official records of the organization; and

- (6) Upon an inmate incarcerated in an institution under the jurisdiction and control of the Department of Corrections, by delivering a copy of the summons and of the petition to the warden or superintendent or the designee of the warden or superintendent of the institution where the inmate is housed. It shall be the duty of the receiving warden or superintendent or a designee to promptly deliver the summons and petition to the inmate named therein. The warden or superintendent or his or her designee shall reject service of process for any inmate who is not actually present in said institution.

2. SERVICE BY MAIL.

- a. At the election of the plaintiff, a summons and petition may be served by mail by the plaintiff's attorney, any person authorized to serve process pursuant to subparagraph a of paragraph 1 of this subsection, or by the court clerk upon a defendant of any class referred to in division (1), (3), or (5) of subparagraph c of paragraph 1 of this subsection. Service by mail shall be effective on the date of receipt or if refused, on the date of refusal of the summons and petition by the defendant.
- b. Service by mail shall be accomplished by mailing a copy of the summons and petition by certified mail, return receipt requested and delivery restricted to the addressee. When there is more than one defendant, the summons and a copy of the petition or order shall be mailed in a separate envelope to each defendant.

If the summons is to be served by mail by the court clerk, the court clerk shall enclose the summons and a copy of the petition or order of the court to be served in an envelope, prepared by the plaintiff, addressed to the defendant, or to the resident service agent if one has been appointed. The court clerk shall prepay the postage and mail the envelope to the defendant, or service agent, by certified mail, return receipt requested and delivery restricted to the addressee. The return receipt shall be prepared by the plaintiff. Service by mail to a garnishee shall be accomplished by mailing a copy of the summons and notice by certified mail, return receipt requested, and at the election of the judgment creditor by restricted delivery, to the addressee.

- c. Service by mail shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older who resides at the defendant's dwelling house or usual place of abode shall constitute acceptance or refusal by the party addressed. In the case of an entity described in division (3) of subparagraph c of paragraph 1 of this subsection, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or

principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. In the case of a state municipal corporation, or other governmental organization thereof subject to suit, acceptance or refusal by an employee of the office of the officials specified in division (5) of subparagraph c of paragraph 1 of this subsection who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default, the person elected by plaintiff pursuant to subparagraph a of this paragraph to serve the process shall mail to the defendant by first-class mail a copy of the summons and petition and a notice prepared by the plaintiff that despite such refusal the case will proceed and that judgment by default will be rendered against him unless he appears to defend the suit. Any default or judgment by default shall be set aside upon motion of the defendant in the manner prescribed in Section 1031.1 of this title, or upon petition of the defendant in the manner prescribed in Section 1033 of this title if the defendant demonstrates to the court that the return receipt was signed or delivery was refused by an unauthorized person. A petition shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the filing of the judgment.

3. SERVICE BY PUBLICATION.

- a. Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or the plaintiff's attorney, or in a separate affidavit by the plaintiff or the plaintiff's attorney filed with the court, that with due diligence service cannot be made upon the defendant by any other method.
- b. Service of summons upon the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in a petition, verified by the plaintiff or the plaintiff's attorney, or in a separate affidavit by the plaintiff or the plaintiff's attorney filed with the court, that the person who verified the petition or the affidavit does not know and with due diligence cannot ascertain the following:
 - (1) whether a person named as defendant is living or dead, and, if dead, the names or whereabouts of the person's successors, if any,
 - (2) the names or whereabouts of the unknown successors, if any, of a named decedent,
 - (3) whether a partnership, corporation, or other association named as a defendant continues to have legal existence or not; or the names or whereabouts of its officers or successors,
 - (4) whether any person designated in a record as a trustee continues to be the trustee; or the names or whereabouts of the successors of the trustee, or

(5) the names or whereabouts of the owners or holders of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills.

c. Service pursuant to this paragraph shall be made by publication of a notice, signed by the court clerk, one (1) day a week for three (3) consecutive weeks in a newspaper authorized by law to publish legal notices which is published in the county where the petition is filed. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. All named parties and their unknown successors who may be served by publication may be included in one notice. The notice shall state the court in which the petition is filed and the names of the plaintiff and the parties served by publication, and shall designate the parties whose unknown successors are being served. The notice shall also state that the named defendants and their unknown successors have been sued and must answer the petition on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly. If jurisdiction of the court is based on property, any real property subject to the jurisdiction of the court and any property or debts to be attached or garnished must be described in the notice.

(1) When the recovery of money is sought, it is not necessary for the publication notice to state the separate items involved, but the total amount

that is claimed must be stated. When interest is claimed, it is not necessary to state the rate of interest, the date from which interest is claimed, or that interest is claimed until the obligation is paid.

- (2) It is not necessary for the publication notice to state that the judgment will include recovery of costs in order for a judgment following the publication notice to include costs of suit.
- (3) In an action to quiet title to real property, it is not necessary for the publication notice to state the nature of the claim or interest of either party, and in describing the nature of the judgment that will be rendered should the defendant fail to answer, it is sufficient to state that a decree quieting plaintiff's title to the described property will be entered. It is not necessary to state that a decree forever barring the defendant from asserting any interest in or to the property is sought or will be entered if the defendant does not answer.
- (4) In an action to foreclose a mortgage, it is sufficient that the publication notice state that if the defendant does not answer, the defendant's interest in the property will be foreclosed. It is not necessary to state that a judgment forever barring the defendant from all right, title, interest, estate, property and equity of redemption in or to said property or any part thereof is requested or will be entered if the defendant does not answer.

- d. Service by publication is complete when made in the manner and for the time prescribed in subparagraph c of this paragraph. Service by publication shall be proved by the affidavit of any person having knowledge of the publication. No default judgment may be entered on such service until proof of service by publication is filed with and approved by the court.
- e. Before entry of a default judgment or order against a party who has been served solely by publication under this paragraph, the court shall conduct an inquiry to determine whether the plaintiff, or someone acting in his behalf, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of any named parties who have been served solely by publication under this paragraph. Before entry of a default judgment or order against the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation or association, the court shall conduct an inquiry to ascertain whether the requirements described in subparagraph b of this paragraph have been satisfied.
- f. A party against whom a default judgment or order has been rendered, without other service than by publication in a newspaper, may, at any time within three (3) years after the filing of the judgment or order, have the judgment or order set aside in the manner prescribed in Sections 1031.1 and 1033 of this title. Before the judgment or order is set aside, the applicant shall notify the adverse party of the intention to make an application and shall file a full answer to the petition, pay all costs if the court requires them to be paid, and satisfy the court by

affidavit or other evidence that during the pendency of the action the applicant had no actual notice thereof in time to appear in court and make a defense. The title to any property which is the subject of and which passes to a purchaser in good faith by or in consequence of the judgment or order to be opened shall not be affected by any proceedings under this subparagraph. Nor shall proceedings under this subparagraph affect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open a judgment or order as provided by this subparagraph, shall be allowed to present evidence to show that during the pendency of the action the applicant had notice thereof in time to appear in court and make a defense.

g. The term "successors" includes all heirs, executors, administrators, devisees, trustees, and assigns, immediate and remote, of a named individual, partnership, corporation, or association.

h. Service outside of the state does not give the court in personal jurisdiction over a defendant who is not subject to the jurisdiction of the courts of this state or who has not, either in person or through an agent, submitted to the jurisdiction of the courts of this state.

4. SERVICE ON THE SECRETARY OF STATE.

a. Service of process on a domestic or foreign corporation may be made by serving the Secretary of State as the corporation's agent, if:

(1) there is no registered agent for the corporation listed in the records of the Secretary of State;
or

(2) neither the registered agent nor an officer of the corporation could be found at the registered office of the corporation, when service of process was attempted.

b. Before resorting to service on the Secretary of State the plaintiff must have attempted service either in person or by mail on the corporation at:

(1) the corporation's last-known address shown on the records of the Franchise Tax Division of the Oklahoma Tax Commission, if any is listed there;
and

(2) the corporation's last-known address shown on the records of the Secretary of State, if any is listed there; and

(3) the corporation's last address known to the plaintiff.

If any of these addresses are the same, the plaintiff is not required to attempt service more than once at any address. The plaintiff shall furnish the Secretary of State with a certified copy of the return or returns showing the attempted service.

c. Service on the Secretary of State shall be made by filing two (2) copies of the summons and petition with the Secretary of State, notifying the Secretary of State that service is being made pursuant to the provisions of this paragraph, and paying the Secretary of State the fee prescribed in paragraph 7 of Section 1142 of Title 18 of the Oklahoma Statutes, which fee shall be taxed as part of the costs of the action,

suit or proceeding if the plaintiff shall prevail therein. If a registered agent for the corporation is listed in the records of the Secretary of State, the plaintiff must also furnish a certified copy of the return showing that service on the registered agent has been attempted either in person or by mail, and that neither the registered agent nor an officer of the corporation could be found at the registered office of the corporation.

- d. Within three (3) working days after receiving the summons and petition, the Secretary of State shall send notice by letter, certified mail, return receipt requested, directed to the corporation at its registered office or the last-known address found in the office of the Secretary of State, or if no address is found there, to the corporation's last-known address provided by the plaintiff. The notice shall enclose a copy of the summons and petition and any other papers served upon the Secretary of State. The corporation shall not be required to serve its answer until forty (40) days after service of the summons and petition on the Secretary of State.
- e. Before entry of a default judgment or order against a corporation that has been served by serving the Secretary of State as its agent under this paragraph, the court shall determine whether the requirements of this paragraph have been satisfied. A default judgment or order against a corporation that has been served only by service on the Secretary of State may be set aside upon motion of the corporation in the manner prescribed in Section 1031.1 of this title, or upon petition of the corporation in the manner

prescribed in Section 1033 of this title, if the corporation demonstrates to the court that it had no actual notice of the action in time to appear and make its defense. A petition shall be filed within one (1) year after the corporation has notice of the default judgment or order but in no event more than two (2) years after the filing of the default judgment or order.

f. The Secretary of State shall maintain an alphabetical record of service setting forth the name of the plaintiff and defendant, the title, docket number, and nature of the proceeding in which the process has been served upon the defendant, the fact that service has been effected pursuant to the provisions of this paragraph, the return date thereof, and the date when the service was made. The Secretary of State shall not be required to retain this information for a period longer than five (5) years from receipt of the service of process.

g. The provisions of this paragraph shall not apply to a foreign insurance company doing business in this state.

5. SERVICE BY ACKNOWLEDGMENT. An acknowledgment on the back of the summons or the voluntary appearance of a defendant is equivalent to service.

6. SERVICE BY OTHER METHODS. If service cannot be made by personal delivery or by mail, a defendant of any class referred to in division (1) or (3) of subparagraph c of paragraph 1 of this subsection may be served as provided by court order in any manner which is reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

7. NO SERVICE BY PRISONER. No prisoner in any jail, Department of Corrections facility, private prison, parolee or probationer under supervision of the Department of Corrections shall be appointed by any court to serve process on any defendant, party or witness.

D. SUMMONS AND PETITION. The summons and petition shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. The failure to serve a copy of the petition with the summons is not a ground for dismissal for insufficiency of service of process, but on motion of the party served, the court may extend the time to answer or otherwise plead. If a summons and petition are served by personal delivery, the person serving the summons shall state on the copy that is left with the person served the date that service is made. This provision is not jurisdictional, but if the failure to comply with it prejudices the party served, the court, on motion of the party served, may extend the time to answer or otherwise plead.

E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

1. Service of the summons and petition may be made anywhere within this state in the manner provided by subsection C of this section.

2. When the exercise of jurisdiction is authorized by subsection F of this section, service of the summons and petition may be made outside this state:

- a. by personal delivery in the manner prescribed for service within this state,
- b. in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction,
- c. in the manner prescribed by paragraph 2 of subsection C of this section,

- d. as directed by the foreign authority in response to a letter rogatory,
- e. in the manner prescribed by paragraph 3 of subsection C of this section only when permitted by subparagraphs a and b of paragraph 3 of subsection C of this section, or
- f. as directed by the court.

3. Proof of service outside this state may be made in the manner prescribed by subsection G of this section, the order pursuant to which the service is made, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction.

4. Service outside this state may be made by an individual permitted to make service of process under the law of this state or under the law of the place in which the service is made or who is designated to make service by a court of this state.

5. When subsection C of this section requires that in order to effect service one or more designated individuals be served, service outside this state under this section must be made upon the designated individual or individuals.

- 6. a. A court of this state may order service upon any person who is domiciled or can be found within this state of any document issued in connection with a proceeding in a tribunal outside this state. The order may be made upon application of any interested person or in response to a letter rogatory issued by a tribunal outside this state and shall direct the manner of service.
- b. Service in connection with a proceeding in a tribunal outside this state may be made within this state without an order of court.

c. Service under this paragraph does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside this state.

F. ASSERTION OF JURISDICTION. A court of this state may exercise jurisdiction on any basis consistent with the Constitution of this state and the Constitution of the United States.

G. RETURN.

1. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process, but the failure to make proof of service does not affect the validity of the service.

2. When process has been served by a sheriff or deputy sheriff and return thereof is filed in the office of the court clerk, a copy of the return shall be sent by the court clerk to the plaintiff's attorney within three (3) days after the return is filed. If service is made by a person other than a sheriff, deputy sheriff, or licensed process server, that person shall make affidavit thereof. The return shall set forth the name of the person served and the date, place, and method of service.

3. If service was by mail, the person mailing the summons and petition shall endorse on the copy of the summons or order of the court that is filed in the action the date and place of mailing and the date when service was receipted or service was rejected, and shall attach to the copy of the summons or order a copy of the return receipt or returned envelope, if and when received, showing whether the mailing was accepted, refused, or otherwise returned. If the mailing was refused, the return shall also show the date and place of any subsequent mailing pursuant to paragraph 2 of subsection C of this section. When the summons and petition are mailed by the court clerk, the court clerk shall notify the plaintiff's attorney within three (3) days after receipt of the

returned card or envelope showing that the card or envelope has been received.

H. AMENDMENT. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is not made upon a defendant within one hundred eighty (180) days after the filing of the petition and the plaintiff cannot show good cause why such service was not made within that period, the action may be dismissed as to that defendant without prejudice upon the court's own initiative with notice to the plaintiff or upon motion. The action shall not be dismissed where a summons was served on the defendant within one hundred eighty (180) days after the filing of the petition and a court later holds that the summons or its service was invalid. After a court quashes a summons or its service, a new summons may be served on the defendant within a time specified by the judge. If the new summons is not served within the specified time, the action shall be deemed to have been dismissed without prejudice as to that defendant. This subsection shall not apply with respect to a defendant who has been outside of this state for one hundred eighty (180) days following the filing of the petition.

SECTION 8. AMENDATORY 57 O.S. 2001, Section 566, is amended to read as follows:

Section 566. A. ~~A civil~~ Any action initiated against any person, party or entity, the state, the Department of Corrections, another state agency, or political subdivision, or an original action in an appellate court, or an appeal of an action whether or not the plaintiff was represented in the district court, by an inmate ~~in a penal institution appearing pro se~~ may be:

1. Dismissed with or without prejudice, by the court on its own motion or on a motion of the defendant, if all administrative and statutory remedies available to the inmate have not been exhausted; or

2. Dismissed with prejudice, by the court on a motion of the defendant, if the court is satisfied that the action is frivolous or malicious.

B. As used in this section:

1. "Frivolous" means having no reasonable basis in law or fact, or lacking any good faith legal argument for the extension, modification, or reversal of existing law, or being maintained solely or primarily for delay or to harass the party filed against;

2. "Inmate" or "inmate in a penal institution" includes, but is not limited to, a person in the custody or under the supervision of the Department of Corrections or the Federal Bureau of Prisons, a person who has been convicted of a crime and is incarcerated for that crime in a county jail, a person who is being held in custody for trial or sentencing, or a person on parole; and

3. "Malicious" means filing numerous actions, or actions brought in bad faith on de minimus issues.

C. If the court determines before or at trial that one or more of the causes of action are frivolous or malicious, any one or more of the following sanctions may be imposed:

1. Award attorney fees and actual costs incurred by the state, the Department of Corrections, another state agency, a political subdivision, the Attorney General's Office, or the defendant, not to exceed Two Thousand Five Hundred Dollars (\$2,500.00) per frivolous cause of action;

2. Court costs not to exceed Five Hundred Dollars (\$500.00) per cause of action;

3. Order the Department of Corrections to revoke up to seven hundred twenty (720) earned credits accrued by the inmate. In any

case in which the prisoner submits a frivolous or malicious claim, or one that is intended solely or primarily for delay or to harass the party filed against, or testifies falsely or otherwise presents false evidence or information to the court in depositions or in a notarized statement to the court or commits a fraud upon the court, the prisoner shall suffer a loss of earned credits. The earned credits shall be deducted upon a finding of fact and an order of the court. In the absence of such a finding by the court and upon review and recommendation by the Office of the Attorney General, a prison disciplinary hearing may be held to determine whether the prisoner has filed such a claim or evidence. Upon such a finding, the earned credits of the prisoner shall be revoked by the Department or political subdivision;

4. Order the Department or political subdivision to revoke permission to have nonessential personal property of the inmate, including, but not limited to, televisions, radios, stereos, or tape recorders. If permission is revoked, the Department shall take appropriate precautions to protect the property during the period of the revocation;

5. Impose a civil sanction in an amount not to exceed One Thousand Dollars (\$1,000.00); or

6. Impose a monetary judgment against the inmate, not to exceed Five Hundred Dollars (\$500.00), to be paid to each named defendant.

D. Any award of attorney fees, or costs, or the imposition of a sanction shall serve as a judgment against the inmate and the Department or political subdivision is authorized to take up to ~~fifty percent (50%)~~ eighty percent (80%) of the inmate's nonmandatory savings trust funds per month until paid. The judgment shall be subject to execution without further order of any court for a period of seven (7) years from the date of an award or imposition of a sanction.

SECTION 9. AMENDATORY 57 O.S. 2001, Section 566.1, is amended to read as follows:

Section 566.1 A. Any inmate ~~in a penal institution~~ as defined in paragraph 2 of subsection B of Section 566 of this title who successfully obtains a final court order or settlement agreement awarding damages for any cause of action in any federal or state proceedings against the state, a state agency, the Department or any political subdivision, or any employee thereof, shall pay or satisfy from the award any previous assessments of court costs or fines involving the criminal convictions of the offender, victims compensation assessments, restitution awards, probation or parole fees, child support or alimony, civil judgments, and any deficiencies of debts not paid of which the Department of Corrections has notice by judgment, lien, garnishment, or other appropriate process. ~~Twenty percent (20%) of the remaining balance~~ After disbursement of the funds by the Department of Corrections, twenty percent (20%) of the award shall be placed in the offender's mandatory savings account and the remainder shall be placed in the offender's regular draw account. The state shall give notice to the inmate of known debts owed by the inmate and shall disburse the award ninety (90) days after the notice is mailed. Any funds deposited with the Department of Corrections or a political subdivision in accordance with this section shall not be subject to the attachment and garnishment procedures set forth in Title 12 of the Oklahoma Statutes.

B. Any inmate, as defined in paragraph 2 of subsection B of Section 566 of this title, or attorney of the inmate, who successfully obtains a final court order awarding damages for any cause of action arising in tort or contract, in any state or federal proceedings, or any settlement agreement, against any party shall notify the Department of Corrections or appropriate political subdivision of the award and shall make the same distribution of the

award as is provided in subsection A of this section. It shall be the duty of the attorney of the inmate or the inmate, if acting pro se, to notify the defendant that any settlement shall be deposited with the Department or political subdivision for disbursement in accordance with this section. In addition, the state, the Department of Corrections, any other state agency, or any political subdivision of the state shall have the first right of subrogation to any such award or settlement for costs of services incurred by the state, state agency, or political subdivision in relation to such claim, for service provided to the inmate at the request of the inmate, and for all costs of incarceration, before any part of the award is placed in the trust account of the inmate.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 566.3 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. 1. If an applicant for in forma pauperis is a prisoner and the prisoner brings an action of any kind, upon filing, the court shall order the prisoner to pay, as a partial payment of any court costs required by law, before the commencement of the action, a first-time payment of twenty percent (20%) of the deposits of the preceding six (6) months to the trust account of the prisoner administered by the confining agency and thereafter monthly payments of twenty percent (20%) of the deposits of the preceding month to the account, but only if the prisoner does not have enough funds to pay the total costs required by law at the time of filing. In those cases where the prisoner has sufficient funds available, the prisoner shall be ordered to pay the required costs before the action may commence. The confining agency shall withdraw monies maintained in the trust account for payment of court fees and shall forward the monies collected at any time the monies exceed Ten Dollars (\$10.00) to the appropriate court clerk, or clerks if multiple courts are involved, until the actual court costs are paid

in full. If the prisoner is discharged before payment in full, the court clerk shall be notified of the reported forwarding address and date of discharge of the prisoner. The prisoner must file a certified copy of the trust account records of the prisoner with the court that reflects the balance and activity of the previous six (6) months at the time the petition is filed. If the prisoner is on probation or parole, the prisoner will file certified copies of bank or savings statements of the account and income receipts for the prior six (6) months.

2. Nothing in this section prevents a prisoner from authorizing payment beyond that required by law or the Department of Corrections or political subdivision from forwarding payment beyond that required by law if the prisoner has the funds available.

3. The court may dismiss any civil action in which the prisoner has failed to pay fees and costs assessed by the court and it is determined the prisoner has funds available and did not pay the required fees and costs.

4. If a prisoner is found to be indigent and totally without any funds pursuant to this section at the time of filing, the case may proceed without prepayment of fees or partial fees. Even in those cases where the court finds the prisoner is without funds, the court shall assess costs against the prisoner, establish a payment schedule and order the costs paid when the prisoner has funds.

B. 1. An affidavit of inability to pay containing complete information as to the identity of the prisoner, prisoner identification number, nature and amount of income, income of the spouse of the prisoner, property owned, cash or checking accounts, dependents, debts and monthly expenses shall be filed with the court. In addition to the information required above, the affidavit shall contain the following statements: "I am unable to pay the court costs at this time. I verify that the statements made in this

affidavit are true and correct." The affidavit shall be sworn as required by law.

2. The Attorney General or other counsel for the defendant shall be authorized to receive information from any source verifying the financial information given by the prisoner.

3. When considering the ability of a prisoner to pay fees and costs and establishing a payment schedule, the court shall consider, but is not limited to consideration of, the following:

- a. all living support received by the person from any source, including the state, whether in money or any form of services,
- b. any income of a spouse,
- c. gifts,
- d. savings accounts,
- e. retirement plans,
- f. trust accounts,
- g. personal property,
- h. inmate trust accounts, and
- i. any dispositions of property, real or personal, in the past twelve (12) months.

C. A court, in which an affidavit of inability to pay has been filed, shall dismiss the action in whole or in part upon a finding that the allegation of poverty is false. If a portion of the action is dismissed, the court shall also designate the issues and defendants on which the action is to proceed without prepaying costs. This order is not subject to an interlocutory appeal.

D. In determining whether the allegation of poverty is false, the court is authorized to hold a hearing, before or after service of process, on its own motion or upon the motion of a party.

E. If the court concludes, based on information contained in the affidavit of inability to pay or other information available to the court, that the prisoner is able to prepay part of the fees or

costs required, then the court shall order a partial payment to be made as a condition precedent to the commencement and further prosecution of the action.

F. 1. The Department of Corrections and each sheriff is hereby authorized to adopt a grievance procedure at its institutions for receiving and disposing of any and all grievances by prisoners against the Department or any officials or employees thereof or a sheriff, deputies of the sheriff or employees of the county, which arise while a prisoner is within the custody or under the supervision of the Department or sheriff. The grievances may include, but are not limited to, any and all claims seeking monetary damages or any other form of relief otherwise authorized by law. All such grievance procedures, including the prisoner disciplinary process, shall be deemed to be the exclusive internal administrative remedy for complaints and grievances.

2. No court of the State of Oklahoma shall entertain a grievance, petition, or complaint of a prisoner unless and until the prisoner has exhausted all the remedies as provided in the grievance procedure of the Director of the Department of Corrections or sheriff. Nothing in this section shall modify requirements of The Governmental Tort Claims Act.

3. Failure to timely institute administrative review of a claim shall be considered an abandonment, and upon motion of the defendants, supported by an affidavit of the defendant that the prisoner has failed to timely institute and exhaust the administrative remedy, the court shall enter a judgment of dismissal with prejudice in that cause of action. Strict adherence to the notice requirement established in the grievance procedures shall be complied with by the prisoner or the attorney of the prisoner.

4. In addition to any other provisions of law providing for the confidentiality of records of the Department of Corrections or a sheriff, all reports, investigations, and like supporting documents

prepared by the Department or sheriff for purposes of responding to the request of a prisoner for an administrative remedy shall be deemed to be prepared in anticipation of litigation and are confidential and not subject to discovery by the prisoner in any civil action or subject to release under the Oklahoma Open Records Act. All formal written responses to the grievance of the prisoner shall be furnished to the prisoner as provided for in the grievance procedure.

5. Any prisoner who is allegedly aggrieved by an adverse decision by the Department of Corrections or a sheriff rendered pursuant to any grievance procedure must file the appropriate civil cause of action or application for extraordinary writ, within one hundred eighty (180) days after the final decision is issued and within the limitations period set forth in The Governmental Tort Claims Act, to the appropriate court alleging specifically what legal right was violated and what remedy exists.

G. Nothing in this section shall be construed as waiving the sovereign immunity or the tort immunity of the state, its agencies, officers or employees for injuries allegedly suffered while in the custody of the state and its agency or any county, sheriff, or officers or employees of the county for injuries allegedly suffered while in the custody of the county.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 566.4 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. No action may be brought in a court of this state by a prisoner for mental or emotional injury allegedly suffered while under arrest, being detained, or in custody or incarcerated without a prior showing of actual physical injury.

B. Neither the state, any of its agencies or boards, the Department of Corrections, any county jail, city jail nor their members, agents, servants or employees shall be liable for any form

of civil claim or action alleged to have arisen from any theory of contract law. No arrest or conviction resulting in detention or incarceration shall create any contractual obligation, either actual, implied or at common law, between the prisoner and the state, any of its agencies or boards, the Department of Corrections, any county jail, city jail nor their members, agents, servants or employees. No policy or internal management procedure issued for the management of the prison or jail shall constitute any contractual relationship or obligation between the state, agency, board, commission, prison, jail, or any of its officers, members, servants or employees, and the prisoner or any visitor to the prison or jail.

C. No civil action of any type may be brought seeking an injunction or temporary restraining order against any city, county or state agency, or any officer or employee thereof, brought by a plaintiff who is currently incarcerated in any jail, state prison or private prison in the state if the claim alleges matters arising from the incarceration of the plaintiff and related to management of the prison, including but not limited to, prison transfers, cell assignments, prison job or work assignments and disciplinary action.

D. In any complaint or allegation made by a prisoner against any person holding a license to any state court, agency, board, commission or association which issues any form of license, in which the state court, agency, board, commission or association has made a determination that the complaint of the prisoner is frivolous, malicious or without merit, the state court, agency, board, commission or association may sanction the prisoner as provided for by law.

E. No prisoner of any city or county jail or of any state, federal or private prison in Oklahoma or any person on parole or probation may obtain any public records maintained by any government entity and pertaining in any manner to any public employee, officer

or to any citizen, or any criminal history record of any convicted felon. No prisoner, probationer or parolee may obtain without prepayment of the required fees and costs any other public record subject to release. The Director of the Department of Corrections shall promulgate a rule for the release of criminal history records available to the public which shall include the requirement that requests for criminal history records include the name of the person whose record is being requested and shall charge Fifteen Dollars (\$15.00) for each completed request responded to in any form of written communication by the Department.

F. No default judgment shall be rendered against any person, city, county or state agency, or any officer or employee thereof, in any form of civil action brought by a plaintiff who is currently incarcerated in any jail, state prison or private prison in the state.

G. Venue for tort actions filed by a prisoner of any state prison in the state shall be in the county of the official residence of the Department of Corrections. Venue for actions filed by a prisoner of any private prison in the state, in which the state, the Department of Corrections or any of its officers or employees are named as parties, shall be in the county of the official residence of the Department of Corrections. Venue for tort actions filed by prisoners of a county jail or city jail, and not involving the Department of Corrections, but against the sheriff, jailer, county officials or employees, city officials or employees shall be in the county where the jail is located.

H. The Attorney General, district attorneys and the general counsel of the Department of Corrections shall notify the Pardon and Parole Board of all lawsuits filed by any prisoner in which a determination was made by a court that the lawsuit was either frivolous or malicious.

I. The Department of Corrections may assess an administrative fee for the processing of any grievance or disciplinary report and shall charge prisoners for the costs of any supplies, materials or services provided to the inmate at the request of the inmate. Any fees collected pursuant to this subsection shall be deposited into the Department of Corrections Revolving Fund.

J. Judgments rendered against prisoners and received by the Department of Corrections for, but not limited to, monetary damages, child support, transportation costs, filing fees, court costs, sanctions or attorney fees may be withdrawn by the Department from any funds deposited into a prison trust account of the prisoner and forwarded to the prevailing party.

K. The court, on its own motion or upon motion of the defendant in any civil action filed by a prisoner or attorney of the prisoner against any party, may stay all proceedings in the case and order the custodian or appropriate party to prepare a special report to the court prior to defendants being required to answer. The special report will order corrections officials or the appropriate party to undertake a review of the subject matter of the petition in order to provide the court with additional information for the processing of the claim of the prisoner, to ascertain the facts and circumstances, to consider whether any action can and should be taken by the institution or other appropriate officials to resolve the subject matter of the petition and to determine whether other like matters, whether pending in this court or elsewhere, are related to this matter and should be taken up and considered together. All reports made in the course of the review shall be attached to and filed with the special report, and a date the special report is due to the court shall be set. All pending motions are stricken without prejudice to their being reasserted after the special report is filed. All discovery under the Oklahoma Rules of Civil Procedure is stayed until the special report has been filed. A copy of the

special report shall be sent to the respective parties by the agency or person preparing the special report. Upon receipt of the special report, dispositive motions may be filed by the parties and the district court may properly dismiss the petition as being frivolous or malicious or for failure to state a claim, may grant summary judgment or order that the case may proceed under the Oklahoma Rules of Civil Procedure.

SECTION 12. AMENDATORY 75 O.S. 2001, Section 250.4, is amended to read as follows:

Section 250.4 A. 1. Except as is otherwise specifically provided in this subsection, each agency is required to comply with Article I of the Administrative Procedures Act.

2. The Corporation Commission shall be required to comply with the provisions of Article I of the Administrative Procedures Act except for subsections A, B, C and E of Section 303 of this title and Section 306 of this title. To the extent of any conflict or inconsistency with Article I of the Administrative Procedures Act, pursuant to Section 35 of Article IX of the Oklahoma Constitution, it is expressly declared that Article I of the Administrative Procedures Act is an amendment to and alteration of Sections 18 through 34 of Article IX of the Oklahoma Constitution.

3. The Oklahoma Military Department shall be exempt from the provisions of Article I of the Administrative Procedures Act to the extent it exercises its responsibility for military affairs.

4. The Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority and the Board of Trustees of the Oklahoma College Savings Plan shall be exempt from Article I of the Administrative Procedures Act.

5. The Oklahoma Transportation Commission and the Oklahoma Department of Transportation shall be exempt from Article I of the Administrative Procedures Act to the extent they exercise their authority in adopting standard specifications, special provisions,

plans, design standards, testing procedures, federally imposed requirements and generally recognized standards, project planning and programming, and the operation and control of the State Highway System.

6. The Oklahoma State Regents for Higher Education shall be exempt from Article I of the Administrative Procedures Act with respect to:

- a. prescribing standards of higher education,
- b. prescribing functions and courses of study in each institution to conform to the standards,
- c. granting of degrees and other forms of academic recognition for completion of the prescribed courses,
- d. allocation of state-appropriated funds, and
- e. fees within the limits prescribed by the Legislature.

7. Institutional governing boards within The Oklahoma State System of Higher Education shall be exempt from Article I of the Administrative Procedures Act.

8. a. The Commissioner of Public Safety shall be exempt from Sections 303.1, 303.2, 304, 307.1, 308 and 308.1 of this title insofar as it is necessary to promulgate rules pursuant to the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act, to maintain a current incorporation of federal motor carrier safety and hazardous material regulations for which the Commissioner has no discretion when the state is mandated to promulgate rules identical to federal rules and regulations.
- b. Such rules may be adopted by the Commissioner and shall be deemed promulgated twenty (20) days after notice of adoption is published in "The Oklahoma Register". Such publication need not set forth the

full text of the rule but may incorporate the federal rules and regulations by reference.

- c. Such copies of promulgated rules shall be filed with the Secretary as required by Section 251 of this title.
- d. For any rules for which the Commissioner has discretion to allow variances, tolerances or modifications from the federal rules and regulations, the Commissioner shall fully comply with Article I of the Administrative Procedures Act.

9. The Council on Judicial Complaints shall be exempt from Section 306 of Article I of the Administrative Procedures Act, with respect to review of the validity or applicability of a rule by an action for declaratory judgment, or any other relief based upon the validity or applicability of a rule, in the district court or by an appellate court. A party aggrieved by the validity or applicability of a rule made by the Council on Judicial Complaints may petition the Court on the Judiciary to review the rules and issue opinions based upon them.

10. The Oklahoma Department of Corrections, Board of Corrections, county sheriffs and managers of city jails shall be exempt from Article I of the Administrative Procedures Act with respect to:

- a. prescribing internal management procedures for the management of the state prisons, county jails and city jails and for the management, supervision and control of all incarcerated prisoners,
- b. prescribing internal management procedures for the management of the probation and parole unit of the Department of Corrections and for the supervision of probationers and parolees.

B. As specified, the following agencies or classes of agency activities are not required to comply with the provisions of Article II of the Administrative Procedures Act:

1. The Oklahoma Tax Commission;
2. The Commission for Human Services;
3. The Oklahoma Ordnance Works Authority;
4. The Oklahoma Corporation Commission;
5. The Pardon and Parole Board;
6. The Midwestern Oklahoma Development Authority;
7. The Grand River Dam Authority;
8. The Northeast Oklahoma Public Facilities Authority;
9. The Council on Judicial Complaints;
10. The Board of Trustees of the Oklahoma College Savings Plan;
11. The supervisory or administrative agency of any penal, mental, medical or eleemosynary institution, only with respect to the institutional supervision, custody, control, care or treatment of inmates, prisoners or patients therein; provided, that the provisions of Article II shall apply to and govern all administrative actions of the Oklahoma Alcohol Prevention, Training, Treatment and Rehabilitation Authority;
12. The Board of Regents or employees of any university, college, or other institution of higher learning, except with respect to expulsion of any student for disciplinary reasons; provided, that upon any alleged infraction by a student of rules of such institutions, with a lesser penalty than expulsion, such student shall be entitled to such due process, including notice and hearing, as may be otherwise required by law, and the following grounds of misconduct, if properly alleged in disciplinary proceedings against a student, shall be cause to be barred from the campus and be removed from any college or university-owned housing, upon conviction in a court of law:

- a. participation in a riot as defined by the penal code,

- b. possession or sale of any drugs or narcotics prohibited by the penal code, Section 1 et seq. of Title 21 of the Oklahoma Statutes, or
- c. willful destruction of or willful damage to state property;

13. The Oklahoma Horse Racing Commission, its employees or agents only with respect to hearing and notice requirements on the following classes of violations which are an imminent peril to the public health, safety and welfare:

- a. any rule regarding the running of a race,
- b. any violation of medication laws and rules,
- c. any suspension or revocation of an occupation license by any racing jurisdiction recognized by the Commission,
- d. any assault or other destructive acts within Commission-licensed premises,
- e. any violation of prohibited devices, laws and rules, or
- f. any filing of false information;

14. The Commissioner of Public Safety only with respect to drivers' license hearings and hearings conducted pursuant to the provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;

15. The Administrator of the Department of Securities only with respect to hearings conducted pursuant to provisions of the Oklahoma Take-over Disclosure Act of 1985;

16. Hearings conducted by a public agency pursuant to Section 962 of Title 47 of the Oklahoma Statutes;

17. The Oklahoma Military Department;

18. The University Hospitals Authority, including all hospitals or other institutions operated by the University Hospitals Authority;

19. The Oklahoma Health Care Authority Board and the Administrator of the Oklahoma Health Care Authority; and

20. The position audit procedure, including the impartial review process, of the Office of Personnel Management pursuant to Section 840-4.3 of Title 74 of the Oklahoma Statutes. Provided, that any appeal from an impartial review determination to a court of competent jurisdiction shall be confined to the record in accordance with the provisions of Article II of the Administrative Procedures Act.

SECTION 13. This act shall become effective July 1, 2002.

SECTION 14. 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.

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