

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

SENATE BILL 1397

By: Robinson

AS INTRODUCED

An Act relating to inmates and privacy information; amending 12 O.S. 2001, Section 95, as amended by Section 1, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2003, Section 95), which relates to limitations of civil actions; providing certain extended limitation for certain actions involving sexual abuse; providing certain time periods for civil actions caused by criminal conduct; stating certain limitations for collections of certain damages; amending 12 O.S. 2001, Section 397, as amended by Section 2, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2003, Section 397), which relates to prisoner as witness or defending party in civil action; requiring certain notice within certain time to custodian of prisoner involved in civil action; prohibiting award of certain attorney fees in certain action; stating when writ is deemed void and unenforceable; prohibiting liability on void writ; amending 12 O.S. 2001, Section 1355, which relates to security for costs on writ of habeas corpus; requiring payment of court costs; amending 12 O.S. 2001, Section 2003.1, as amended by Section 6, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2003, Section 2003.1), which relates to commencement of actions by inmates; requiring certain list of prior lawsuits filed within certain time period; authorizing certain dismissal of civil action by inmate for willful noncompliance of certain requirements; amending 12 O.S. 2001, Section 2503, as last amended by Section 10, Chapter 390, O.S.L. 2003 (12 O.S. Supp. 2003, Section 2503), which relates to physician-patient privilege; authorizing release of certain information on inmates under certain circumstances; amending 43A O.S. 2001, Section 1-109, as last amended by Section 1, Chapter 196, O.S.L. 2003 (43A O.S. Supp. 2003, Section 1-109), which relates to confidentiality of medical records; authorizing release of certain information on inmates; amending 57 O.S. 2001, Section 332.7, as amended by Section 2, Chapter 306, O.S.L. 2003 (57 O.S. Supp. 2003, Section 332.7), which relates to parole; modifying language; amending 57 O.S. 2001, Section 510, as amended by Section 3, Chapter 82, O.S.L. 2003 (57 O.S. Supp. 2003, Section 510), which relates to duties of the Director of Corrections; authorizing disposal of contraband property; amending 57 O.S. 2001, Section 549, which relates to inmate trust funds; increasing percentage amount charged for costs of incarceration against workers' compensation benefits deposited in inmate trust accounts; amending 57 O.S. 2001, Section 566, as amended by Section 8, Chapter 402, O.S.L. 2002 (57 O.S. Supp. 2003, Section

566), which relates to sanctions for frivolous actions; providing certain notice to inmate on frivolous causes of action; allowing inmate response to certain notice; amending 57 O.S. 2001, Section 566.1, as amended by Section 9, Chapter 402, O.S.L. 2002 (57 O.S. Supp. 2003, Section 566.1), which relates to payment and distributions from damage awards to inmates; providing for payment of debts for which the state, political subdivisions, or the Department of Corrections has received notification of obligation; allowing a reasonable time to review and discover certain debts of inmate; requiring disbursement of awards to certain debtors within certain time; requiring remaining balance deposited for certain purpose; construing application of certain attachment procedures and statutory limitations on collections; requiring exhaustion of all administrative and statutory remedies as a jurisdictional requirement for certain civil actions; amending Section 10, Chapter 402, O.S.L. 2002 (57 O.S. Supp. 2003, Section 566.3), which relates to forma pauperis status of inmates; allowing dismissal of civil actions for certain reasons; amending 59 O.S. 2001, Section 1376, which relates to confidential communications; authorizing release of certain information on inmates; amending 63 O.S. 2001, Section 1-502.2, which relates to confidentiality of medical records; allowing release of certain records on inmates for certain purpose; amending 63 O.S. 2001, Section 2-508, as amended by Section 1, Chapter 111, O.S.L. 2002 (63 O.S. Supp. 2003), Section 2-508), which relates to disposition of seized property; modifying distribution of property subject to forfeiture; amending 76 O.S. 2001, Section 19, as last amended by Section 23, Chapter 390, O.S.L. 2003 (76 O.S. Supp. 2003, Section 19), which relates to access to medical records; exempting inmate records under certain circumstances; 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, as amended by Section 1, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2003, Section 95), is amended to read as follows:

Section 95. A. 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 7102 of Title 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 or until five (5) years after the perpetrator is released from the custody of a state, federal or local correctional facility or jail, whichever is later. No action may be brought against the alleged perpetrator or the estate of the alleged perpetrator after the death of such alleged perpetrator, unless the perpetrator was convicted of a crime of sexual abuse involving the claimant. 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 based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of criminal actions, as defined by the Oklahoma Statutes, may be brought against any person incarcerated or under the supervision of a state, federal or local correctional facility on or after November 1, 2003:

- a. at any time during the incarceration of the offender for the offense on which the action is based, or

b. within five (5) years after the perpetrator is released from the custody of a state, federal or local correctional facility, if the defendant was serving time for the offense on which the action is based;

8. 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.~~ 9. 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.~~ 10. Court-ordered child support is owed until it is paid in full and it is not subject to a statute of limitations;

~~10.~~ 11. An action filed by an inmate or by a person based upon facts that occurred while the person was an inmate in the custody of one of the following:

- a. the State of Oklahoma,
- b. a contractor of the State of Oklahoma, or
- c. 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.~~ 12. An action for relief, not hereinbefore provided for, can only be brought within five (5) years after the cause of action shall have accrued.

B. Collection of debts owed by inmates who have received damage awards pursuant to Section 566.1 of Title 57 of the Oklahoma Statutes shall be governed by the time limitations imposed by that section.

SECTION 2. AMENDATORY 12 O.S. 2001, Section 397, as amended by Section 2, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2003, 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. 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 may apply for a Writ of Habeas Corpus for the purpose of having the prisoner appear before the court. The custodian of the prisoner shall be given prior notice of the application and fifteen (15) days to respond prior to the decision of the court. If the court issues such writ, it shall be issued and delivered to the custodian of the prisoner at least fifteen (15) days prior to the date the prisoner is to appear, shall order the custodian to be paid for all costs of transportation and shall order the prisoner to be delivered to the court named in the writ. The court shall not award attorney fees and costs to the prevailing party in this matter.

C. If upon application, 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.

D. Any writ that fails to comply with all of the requirements of this section shall be void and unenforceable and no officer or employee of the custodian shall be liable for failing to execute said writ.

SECTION 3. AMENDATORY 12 O.S. 2001, Section 1355, is amended to read as follows:

Section 1355. No deposit or security for costs shall be required of an applicant for the initial application for a writ of habeas corpus. An applicant for a writ of habeas corpus shall be required to pay court costs pursuant to the procedures provided in Section 566.3 of Title 57 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 12 O.S. 2001, Section 2003.1, as amended by Section 6, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2003, Section 2003.1), is amended to read as follows:

Section 2003.1

COMMENCEMENT OF ACTIONS BY INMATES

A. Petitions, motions, or other pleadings filed by an inmate as defined in paragraph 2 of subsection B of Section 566 of 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) 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; and

11. A complete list, supported by affidavit under penalty of perjury, of all lawsuits filed by the inmate as an inmate in the previous ten (10) years in state and federal courts and the disposition of each case.

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, the proof of poverty required by the Oklahoma Statutes shall 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. If the court determines that the inmate-plaintiff knowingly and willfully failed to comply with all the requirements of this section, the court may dismiss the case with prejudice.

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 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 5. AMENDATORY 12 O.S. 2001, Section 2503, as last amended by Section 10, Chapter 390, O.S.L. 2003 (12 O.S. Supp. 2003, Section 2503), is amended to read as follows:

Section 2503. A. As used in this section:

1. A "patient" is a person who consults or is examined or interviewed by a physician or psychotherapist;

2. A "physician" is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized;

3. A "psychotherapist" is:

a. a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or

b. a person licensed or certified as a psychologist under the laws of any state or nation, or reasonably believed by the patient to be so licensed or certified, while similarly engaged; and

4. A communication is "confidential" if not intended to be disclosed to third persons, except persons present to further the interest of the patient in the consultation, examination or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

B. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition, including alcohol or drug addiction, among the patient, the patient's physician or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

C. The privilege may be claimed by the patient, the patient's guardian or conservator or the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

D. The following shall be exceptions to a claim of privilege:

1. There is no privilege under this section for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

2. Communications made in the course of a court-ordered examination of the physical, mental or emotional condition of a patient, whether a party or a witness, are not privileged under this section when they relate to the particular purpose for which the examination is ordered unless the court orders otherwise; ~~or~~

3. The privilege under this Code as to a communication relevant to the physical, mental or emotional condition of the patient in any proceeding in which the patient relies upon that condition as an element of the patient's claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense is qualified to the extent that an adverse party in the proceeding may obtain relevant information regarding the condition by statutory discovery; or

4. When the patient is an inmate in the custody of the Department of Corrections or a private prison or facility under contract with the Department of Corrections, and the release of the information is necessary:

a. to prevent or lessen a serious and imminent threat to the health or safety of any person, or

- b. for law enforcement authorities to identify or apprehend an individual where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.

SECTION 6. AMENDATORY 43A O.S. 2001, Section 1-109, as last amended by Section 1, Chapter 196, O.S.L. 2003 (43A O.S. Supp. 2003, Section 1-109), is amended to read as follows:

Section 1-109. A. 1. All mental health and drug or alcohol abuse treatment information, whether or not recorded, and all communications between a physician or psychotherapist and a patient are both privileged and confidential. In addition, the identity of all persons who have received or are receiving mental health or drug or alcohol abuse treatment services shall be considered confidential and privileged.

2. Such information shall only be available to persons ~~or~~ actively engaged in the treatment of the patient or in related administrative work. The information available to persons actively engaged in the treatment of the consumer or in related administrative work shall be limited to the minimum amount of information necessary for the person or agency to carry out its function.

3. Such information shall not be disclosed to anyone not involved in the treatment or related administrative work without a valid written release or an order from a court of competent jurisdiction.

B. 1. The restrictions on disclosure shall not apply to the following:

- a. communications to law enforcement officers that are directly related to a commission of a crime by a patient on the premises of a facility or against facility personnel or to a threat to commit such a crime, and that are limited to the circumstances of

- the incident, including the patient status of the individual committing or threatening to commit the crime, the name and address of that individual, and the last-known whereabouts of that individual,
- b. reporting under state law of incidents of suspected child abuse and neglect to the appropriate authorities, ~~and~~
 - c. disclosure of patient-identifying information to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention,
 - d. disclosure of information when the patient is an inmate in the custody of the Department of Corrections or a private prison or facility under contract with the Department of Corrections and the information is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and the information is released to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat, and
 - e. disclosure of patient-identifying information when it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody and the release is to a law enforcement authority for the purpose of identification and apprehension.

2. Disclosures under this subsection shall be limited to the minimum information necessary to accomplish the intended purpose of the disclosure.

C. A person who is or has been a patient of a physician, psychotherapist, mental health facility, a drug or alcohol abuse treatment facility or service, other agency for the purpose of mental health or drug or alcohol abuse care and treatment shall be entitled to personal access to such person's mental health or drug or alcohol abuse treatment information unless such access is reasonably likely to endanger the life or physical safety of the patient or another person as determined by the person in charge of the care and treatment of the patient.

D. 1. The restrictions on disclosure of mental health or drug or alcohol abuse treatment information shall not restrict the disclosure of patient-identifying information related to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death. Any other disclosure regarding a deceased patient shall require either a court order or a written release of an executor, administrator, or personal representative appointed by the court, or if there is no such appointment, by the spouse of the patient or, if none, by any responsible member of the family of the patient.

2. "Responsible family member" means the parent, adult child, adult sibling, or other adult relative who was actively involved in providing care to or monitoring the care of the deceased patient as verified by the physician, psychologist or other person responsible for the care and treatment of such person.

E. A valid written release for disclosure of mental health or drug or alcohol abuse treatment information shall have, at a minimum, the following elements:

1. The specific name or general designation of the program or person permitted to make the disclosure;

2. The name or title of the individual or the name of the organization to which disclosure is to be made;

3. The name of the patient whose records are to be released;

4. The purpose of the disclosure;
5. A description of the information to be disclosed;
6. The dated signature of the patient or authorized representative or both when required;
7. A statement of the right of the patient to revoke the release in writing and a description of how the patient may do so;
8. An expiration date, event or condition if not revoked before, which shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given; and
9. If the release is signed by a person authorized to act for a patient, a description of the authority of such person to act.

SECTION 7. AMENDATORY 57 O.S. 2001, Section 332.7, as amended by Section 2, Chapter 306, O.S.L. 2003 (57 O.S. Supp. 2003, Section 332.7), is amended to read as follows:

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

1. Has completed serving one-third (1/3) of the sentence;
2. Has 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 in Sections 598 through 601, Chapter 133, O.S.L. 1997; provided, however, no inmate serving a sentence for crimes listed in Schedules A, S-1, S-2 or S-3 of Section 6, Chapter 133, O.S.L. 1997, or serving a sentence of life imprisonment without parole shall be eligible to be considered for parole pursuant to this paragraph;
3. Has reached eighty-five percent (85%) of the midpoint of the time of imprisonment that would have been imposed for an offense that is listed in Schedule A, B, C, D, D-1, S-1, S-2 or S-3 of Section 6, Chapter 133, O.S.L. 1997, 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. Has reached seventy-five percent (75%) of the midpoint of the time of imprisonment that would have been imposed for an offense that is listed in any other schedule, 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. For a crime committed on or after July 1, 1998, any person in the custody of the Department of Corrections shall be eligible for consideration for parole who has completed serving one-third (1/3) of the sentence; provided, however, no inmate serving a sentence of life imprisonment without parole shall be eligible to be considered for parole pursuant to this subsection.

C. The parole hearings conducted for persons pursuant to paragraph 3 of subsection A of this section or for any person who was convicted of a violent crime as set forth in Section 571 of this title and who is eligible for parole consideration pursuant to either paragraph 1 of subsection A of this section or subsection B of this section shall be conducted in two stages, as follows:

1. At the initial hearing, the Pardon and Parole Board shall review the completed report submitted by the staff of the Board and shall conduct a vote regarding whether, based upon that report, the Board decides to consider the person for parole at a subsequent meeting of the Board; and

2. At the subsequent meeting, the Board shall hear from any victim or victim's representative that wants to contest the granting of parole to that person and shall conduct a vote regarding whether parole should be recommended for that person.

D. Any inmate who has parole consideration dates calculated pursuant to subsection A, B or C of this section shall be considered

at the earliest such date. Except as otherwise directed by the Pardon and Parole Board, any person who has been considered for parole and was denied parole or who has waived consideration shall not be reconsidered for parole:

1. Within three (3) years of the denial or waiver, if the person was convicted of a violent crime, as set forth in Section 571 of this title, and was eligible for consideration pursuant to paragraph 1 of subsection A of this section or subsection B of this section, unless the person is within one (1) year of discharge; or

2. Until the person has served at least one-third (1/3) of the sentence imposed, if the person was eligible for consideration pursuant to paragraph 3 of subsection A of this section. Thereafter the person shall not be considered more frequently than once every three (3) years, unless the person is within one (1) year of discharge.

E. Any person in the custody of the Department of Corrections for a crime committed prior to July 1, 1998, who has been considered for parole on a docket created for a type of parole consideration that has been abolished by the Legislature shall not be considered for parole except in accordance with this section.

F. ~~The Department of Corrections and the~~ Pardon and Parole Board shall promulgate rules for the implementation of subsections A, B and C 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 a person eligible for parole consideration pursuant to subsection A of this section would have received under the applicable matrix.

G. 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.

H. 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.

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

J. 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.

K. 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.

L. All references in this section to matrices or schedules shall be construed with reference to the provisions of Sections 6, 598, 599, 600 and 601, Chapter 133, O.S.L. 1997.

M. Any person in the custody of the Department of Corrections who is convicted of a felony sex offense pursuant to Section 582 of Title 57 of the Oklahoma Statutes who is paroled shall immediately be placed on intensive supervision.

SECTION 8. AMENDATORY 57 O.S. 2001, Section 510, as amended by Section 3, Chapter 82, O.S.L. 2003 (57 O.S. Supp. 2003, Section 510), is amended to read as follows:

Section 510. A. The Director of the Department of Corrections shall have the following specific powers and duties relating to the penal institutions:

1. To appoint, subject to the approval of the State Board of Corrections, a warden or superintendent for each penal institution, who shall qualify for the position by character, personality, ability, training, and successful administrative experience in the correctional field; and if the person is not the incumbent warden or superintendent of a penal institution, the person shall have a college degree with a major in the behavioral sciences. As used in this section, "major in the behavioral sciences" means a major in psychology, sociology, criminology, education, corrections, human relations, guidance and counseling, administration, criminal justice administration, or penology;

2. To fix the duties of the wardens and superintendents and to appoint and fix the duties and compensation of such other personnel for each institution as may be necessary for the proper operation thereof. However, correctional officers and guards hired after November 1, 1995, shall be subject to the following qualifications:

- a. the minimum age for service shall be twenty-one (21) years of age. The Director shall have the authority to establish the maximum age for correctional officers entering service, ~~and~~
- b. possession of a minimum of thirty (30) semester hours from an accredited college or university, or possession of a high school diploma acquired from an accredited high school or GED equivalent testing program and graduation from a training course conducted by or approved by the Department and certified by the Council on Law Enforcement Education and Training either prior to employment or during the first six (6) months of employment, ~~and~~
- c. be a resident of this state during employment, ~~and~~
- d. be of good moral character, ~~and~~
- e. before going on duty alone, satisfactory completion of an adequate training program for correctional officers and guards, as prescribed and approved by the State Board of Corrections, ~~and~~
- f. satisfactory completion of minimum testing or professional evaluation through the Merit System of Personnel Administration to determine the fitness of the individual to serve in the position written evaluations shall be submitted to the Department of Corrections, and
- g. satisfactory completion of a physical in keeping with the conditions of the job description on an annual

basis and along the guidelines as established by the Department of Corrections;

3. To designate as peace officers qualified personnel in any Department of Corrections job classifications. The Director shall designate as peace officers correctional officers who are employed in positions requiring said designation. The peace officer authority of employees designated as peace officers shall be limited to: maintaining custody of prisoners; preventing attempted escapes; pursuing, recapturing and incarcerating escapees and parole or probation violators and arresting such escapees, parole or probation violators, serving warrants, and performing any duties specifically required for the job descriptions. Such powers and duties of peace officers may be exercised for the purpose of maintaining custody, security, and control of any prisoner being transported outside this state as authorized by the Uniform Criminal Extradition Act. To become qualified for designation as peace officers, employees shall meet the training and screening requirements conducted by the Department and certified by the Council on Law Enforcement Education and Training within twelve (12) months of employment or, in the case of employees designated as peace officers on or before July 1, 1997, by July 1, 1998, and shall not be subject to Section 3311 of Title 70 of the Oklahoma Statutes;

4. To maintain such industries, factories, plants, shops, farms, and other enterprises and operations, hereinafter referred to as prison industries, at each institution as the State Board of Corrections deems necessary or appropriate to employ the prisoners or teach skills, or to sustain the institution; and as provided for by policies established by the State Board of Corrections, to allow compensation for the work of the prisoners, and to provide for apportionment of inmate wages, the amounts thus allowed to be kept in accounts by the Board for the prisoners and given to the inmates upon discharge from the institution, or upon an order paid to their

families or dependents or used for the personal needs of the prisoners. Any industry that employs prisoners shall be deemed a "State Prison Industry" if the prisoners are paid from state funds including the proceeds of goods sold as authorized by Section 123f of Title 74 of the Oklahoma Statutes. Any industry in which wages of prisoners are paid by a nongovernmental person, group, or corporation, except those industries employing prisoners in work-release centers under the authority of the Department of Corrections shall be deemed a "Private Prison Industry";

5. To assign residences at each institution to institutional personnel and their families;

6. To provide for the education, training, vocational education, rehabilitation, and recreation of prisoners;

7. To regulate the operation of canteens for prisoners;

8. To prescribe rules for the conduct, management, and operation of each institution, including rules for the demeanor of prisoners ~~and, the~~ punishment of recalcitrant prisoners ~~or, the~~ treatment of incorrigible prisoners, and the disposal of property or contraband seized from inmates or offenders under the supervision of the Department;

9. To transfer prisoners from one institution to another;

10. To transfer to a state hospital for the mentally ill for care and treatment, any prisoner who appears to be mentally ill. The prisoner shall be returned to the institution when the superintendent of the hospital certifies that the prisoner has been restored to mental health;

11. To establish procedures that ensure inmates are educated and provided with the opportunity to execute advanced directives for health care in compliance with Section 3101.2 of Title 63 of the Oklahoma Statutes. The procedures shall ensure that any inmate executing an advanced directive for health care is competent and executes the directive with informed consent;

12. To maintain courses of training and instruction for employees at each institution;

13. To maintain a program of research and statistics;

14. To provide for the periodic audit, at least once annually, of all funds and accounts of each institution and the funds of each prisoner;

15. To provide, subject to rules established by the State Board of Corrections, for the utilization of inmate labor for any agency of the state, city, town, or subdivision of this state, upon the duly authorized request for such labor by the agency. The inmate labor shall not be used to reduce employees or replace regular maintenance or operations of the agency. The inmate labor shall be used solely for public or state purposes. No inmate labor shall be used for private use or purpose. Insofar as it is practicable, all inmate labor shall be of such a nature and designed to assist and aid in the rehabilitation of inmates performing the labor;

16. To provide clerical services for, and keep and preserve the files and records of, the Pardon and Parole Board; make investigations and inquiries as to prisoners at the institutions who are to be, or who might be, considered for parole or other clemency; assist prisoners who are to be, or who might be, considered for parole or discharge in obtaining suitable employment in the event of parole or discharge; report to the Pardon and Parole Board, for recommendation to the Governor, violations of terms and conditions of paroles; upon request of the Governor, make investigations and inquiries as to persons who are to be, or who might be, considered for reprieves or leaves of absence; report to the Pardon and Parole Board, for recommendation to the Governor, whether a parolee is entitled to a pardon, when the terms and conditions of the parole have been completed; make presentence investigations for, and make reports thereof to, trial judges in criminal cases before sentences are pronounced; supervise persons undergoing suspended sentences, or

who are on probation or parole; and develop and operate, subject to the policies and guidelines of the Board, work-release centers, community treatment facilities or prerelease programs at appropriate sites throughout this state;

17. To establish an employee tuition assistance program and promulgate rules in accordance with the Administrative Procedures Act for the operation of the program. The rules shall include, but not be limited to, program purposes, eligibility requirements, use of tuition assistance, service commitment to the Department, reimbursement of tuition assistance funds for failure to complete course work or service commitment, amounts of tuition assistance and limitations, and record keeping;

18. To establish an employee recruitment and referral incentive program and promulgate rules in accordance with the Administrative Procedures Act for the operation of the program. The rules shall include, but not be limited to, program purposes, pay incentives for employees, eligibility requirements, payment conditions and amounts, payment methods, and record keeping;

19. To provide reintegration referral services to any person discharged from the state custody who has volunteered to receive reintegration referral services. The Director may assign staff to refer persons discharged from state custody to services. The Director shall promulgate rules for the referral process. All reintegration referral services shall be subject to the availability of funds; and

20. To conduct continual planning and research and periodically evaluate the effectiveness of the various correctional programs instituted by the Department; manage the designing, building, and maintaining of all the capital improvements of the Department; establish and maintain current and efficient business, bookkeeping, and accounting practices and procedures for the operations of all institutions and facilities, and for the Department's fiscal

affairs; conduct initial orientation and continuing in-service training for the Department employees; provide public information services; inspect and examine the condition and management of state penal and correctional institutions; investigate complaints concerning the management of prisons or alleged mistreatment of inmates thereof; and hear and investigate complaints as to misfeasance or nonfeasance of employees of the Department.

B. When an employee of the Department of Corrections has been charged with a violation of the rules of the Department or with a felony pursuant to the provisions of a state or federal statute, the Director may, in the Director's discretion, suspend the charged employee, in accordance with the Oklahoma Personnel Act and/or the Merit System of Personnel Administration Rules, pending the hearing and final determination of the charges. Notice of suspension shall be given by the Director, in accordance with the provisions of the Oklahoma Personnel Act. If after completion of the investigation of the charges, it is determined that such charges are without merit or are not sustained before the Oklahoma Merit Protection Commission or in a court of law, the employee shall be reinstated and shall be entitled to receive all lost pay and benefits.

This subsection shall in no way deprive an employee of the right of appeal according to the Oklahoma Personnel Act, ~~Section 840-6.5 of Title 74 of the Oklahoma Statutes.~~

SECTION 9. AMENDATORY 57 O.S. 2001, Section 549, is amended to read as follows:

Section 549. A. The State Board of Corrections shall have the following powers and duties with respect to the operation of prison industries, the Construction Division, and administration of inmate trust funds:

1. The power to make leases or other contracts consistent with the operation of prison industries, and to set aside land or facilities for the use of such industry;

2. The power to establish conditions for expenditures by the Department of Corrections from the Industries Revolving Fund;

3. The power to negotiate wages and working conditions on behalf of prisoners working in prison industries or prisoners working in the Construction Division. Pay grades for the Construction Division "on-the-job training" inmate crews shall be as follows:

- a. Pay Grade "A" - Inmate Worker,
- b. Pay Grade "B" - Inmate Worker,
- c. Pay Grade "C" - Apprentice,
- d. Pay Grade "D" - Skilled Craft;

4. The power to collect wages on behalf of the inmate, to apportion inmate wages in accordance with the law; and the duty to preserve those wages reserved for the inmate in an account for his or her benefit, and to establish procedures by which the inmate can draw funds from this account under the conditions and limitations and for the purposes allowed by law;

5. The duty to establish the percentages of such wages which shall be available for apportionment to inmate savings; to the inmate for his or her personal use; to the lawful dependents of the inmate, if any; to the victim of the inmate's crime; for payment of creditors; for payment of costs and expenses for criminal actions against such inmate; and to the Department of Corrections for costs of incarceration. Provided, that not less than twenty percent (20%) of such wages shall be placed in an account, payable to the prisoner upon his or her discharge or upon assignment to a prerelease program. Funds from this account may be used by the inmate for fees or costs in filing a civil or criminal action as defined in Section 151 et seq. of Title 28 of the Oklahoma Statutes or for federal action as defined in Section 1911 et seq. of Title 28 of the United States Code, 28 U.S.C., Section 1911 et seq.; and

6. The power to invest the twenty percent (20%) mandatory savings of each inmate in an interest-bearing account with the interest accruing and payable to the Crime Victims Compensation Fund, as provided in Section 142.17 of Title 21 of the Oklahoma Statutes. The interest from each inmate's savings account shall be payable to the Crime Victims Compensation Fund, at such intervals as may be determined by the Board, in addition to any other payments to such fund required by the inmate's sentence or otherwise by law. An inmate shall not have the right, use or control of any interest derived from any funds placed in a mandatory savings account.

B. The State Board of Corrections shall cause to be placed in an account income from the inmate's employment and any other income or benefits accruing to or payable to and for the benefit of said inmate, including any workers' compensation or Social Security benefits.

1. From this account the State Board of Corrections may charge for costs of incarceration any inmate working in private prison industries or any other inmate for costs of incarceration not to exceed fifty percent (50%) of any deposits made to said account, unless said deposits were from a workers' compensation benefit.

2. From this account, the State Board of Corrections may charge any inmate for costs of incarceration, an amount equivalent to one hundred percent (100%) of any deposits from a workers' compensation benefit to said account.

3. The Department of Corrections shall pay into the Crime Victims Compensation Revolving Fund, Section 142.17 of Title 21 of the Oklahoma Statutes, an amount equal to five percent (5%) of the gross wages earned by inmates working in a private prison industries program, said amount to be paid from the amount deducted for cost of incarceration.

~~3.~~ 4. Withdrawals and deposits shall be made according to rules and regulations established by the State Board of Corrections.

C. The Department of Corrections may assess costs of incarceration against all inmates beginning on September 1, 1992. Such costs shall be a debt of the inmate owed to the Department of Corrections and may be collected as provided by law for collection of any other civil debt. In addition to the provisions of this section authorizing expenditure of inmate trust funds for costs of incarceration, any monies received for costs of incarceration shall be deposited in the Department of Corrections Revolving Fund.

SECTION 10. AMENDATORY 57 O.S. 2001, Section 566, as amended by Section 8, Chapter 402, O.S.L. 2002 (57 O.S. Supp. 2003, Section 566), is amended to read as follows:

Section 566. A. Any action by an inmate 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~~ 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 in a timely manner; 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~~ from the pleadings or the evidence that one or more of the causes of action are frivolous or malicious, any one or more of the following sanctions may be imposed, after notice to the inmate and an opportunity for the inmate to respond, without the need for an additional hearing:

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 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 11. AMENDATORY 57 O.S. 2001, Section 566.1, as amended by Section 9, Chapter 402, O.S.L. 2002 (57 O.S. Supp. 2003, Section 566.1), is amended to read as follows:

Section 566.1 A. Any inmate 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:~~

1. Any previous assessments of court costs or fines involving the criminal convictions of the offender, ~~victims;~~

2. Victims compensation assessments, ~~restitution;~~

3. Restitution awards, ~~probation;~~

4. Probation or parole fees, ~~child~~;

5. Child support or alimony, ~~civil~~;

6. Civil judgments~~;~~ and ~~any~~

7. Any deficiencies of debts not paid of which the state or the Department of Corrections has notice by judgment, lien, garnishment, or other appropriate process.

B. After disbursement of the funds by the state or 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~~ Department shall give notice to the inmate of known debts owed by the inmate. The Department shall be granted a reasonable time to review and discover all outstanding debts of the inmate as enumerated in subsection A of this section and shall disburse the award ninety (90) days after the notice is mailed, to all outstanding debtors of the inmate within six (6) months of the final court order or settlement agreement. The Department shall deposit the remaining funds pursuant to subsection C of this section. All of the amounts and 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 until ninety (90) days after the notice is mailed all outstanding debts are paid pursuant to this section. For purposes of this section, the statutory limits on the collection of debts set out in subsection A of Section 95 of Title 12 of the Oklahoma Statutes shall not apply.

~~B.~~ C. 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 12. AMENDATORY Section 10, Chapter 402, O.S.L. 2002 (57 O.S. Supp. 2003, Section 566.3), is amended to read as follows:

Section 566.3 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. Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that:

1. The allegation of poverty is untrue; or

2. The action or appeal:

a. is frivolous or malicious,

b. fails to state a claim on which relief may be granted,
or

c. seeks monetary relief against a defendant who is
immune from such relief.

G. 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.~~ H. 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 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 566.5 of Title 57, unless there is created a duplication in numbering, reads as follows:

In a legal proceeding filed by an inmate against any person or the state, full exhaustion of all administrative and statutory remedies is a jurisdictional requirement and must be completed prior to the filing of any pleadings.

SECTION 14. AMENDATORY 59 O.S. 2001, Section 1376, is amended to read as follows:

Section 1376. All communications between a licensed psychologist and the individual with whom the psychologist engages in the practice of psychology are confidential. At the initiation of the professional relationship the psychologist shall inform the patient of the following limitations to the confidentiality of their communications. No psychologist, colleague, agent or employee of any psychologist, whether professional, clerical, academic or therapeutic, shall disclose any information acquired or revealed in the course of or in connection with the performance of the psychologist's professional services, including the fact, circumstances, findings or records of such services, except under the following circumstances:

1. Pursuant to the provisions of Section 2503 of Title 12 of the Oklahoma Statutes or where otherwise provided by law;
2. Upon express, written consent of the patient;
3. Upon the need to disclose information to protect the rights and safety of self or others if:
 - a. the patient presents a clear and present danger to himself and refuses explicitly or by behavior to voluntarily accept further appropriate treatment. In such circumstances, where the psychologist has a

reasonable basis to believe that a patient can be committed to a hospital pursuant to Section 5-401 of Title 43A of the Oklahoma Statutes, the psychologist shall have a duty to seek commitment. The psychologist may also contact members of the patient's family, or other individuals if in the opinion of the psychologist, such contact would assist in protecting the safety of the patient,

b. the patient has communicated to the psychologist an explicit threat to kill or inflict serious bodily injury upon a reasonably identified person and the patient has the apparent intent and ability to carry out the threat. In such circumstances the psychologist shall have a duty to take reasonable precautions. A psychologist shall be deemed to have taken reasonable precautions if the psychologist makes reasonable efforts to take one or more of the following actions:

- (1) communicates a threat of death or serious bodily injury to the reasonably identified person,
- (2) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential victim resides,
- (3) arranges for the patient to be hospitalized voluntarily, or
- (4) takes appropriate steps to initiate proceedings for involuntary hospitalization pursuant to law,

c. the patient has a history of physical violence which is known to the psychologist and the psychologist has a reasonable basis to believe that there is a clear and imminent danger that the patient will attempt to kill or inflict serious bodily injury upon a

reasonably identified person. In such circumstances the psychologist shall have a duty to take reasonable precaution. A psychologist shall be deemed to have taken reasonable precautions if the psychologist makes reasonable efforts to take one or more of the following actions:

- (1) communicates a threat of death or serious bodily injury to the reasonably identified person,
 - (2) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential victim resides,
 - (3) arranges for the patient to be hospitalized voluntarily,
 - (4) takes appropriate steps to initiate proceedings for involuntary hospitalization pursuant to law,
- d. nothing contained in subparagraph b of this paragraph shall require a psychologist to take any action which, in the exercise of reasonable professional judgment, would endanger the psychologist or increase the danger to a potential victim or victims, or
- e. the psychologist shall only disclose that information which is essential in order to protect the rights and safety of others;

4. In order to collect amounts owed by the patient for professional services rendered by the psychologist or employees of the psychologist. Provided, the psychologist may only disclose the nature of services provided, the dates of services, the amount due for services and other relevant financial information. If the patient raises as a defense to said action, a substantive assertion concerning the competence of the psychologist or the quality of the services provided, the psychologist may disclose whatever information is necessary to rebut such assertion;

5. In any proceeding brought by the patient against the psychologist and in any malpractice, criminal or license revocation proceeding in which disclosure is necessary or relevant to the claim or defense of the psychologist; ~~or~~

6. In such other situations as shall be defined by the rules and regulations of the Board; or

7. When the patient is an inmate in the custody of the Department of Corrections or a private prison or facility under contract with the Department of Corrections, and the release of the information is necessary:

- a. to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and it is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat, or
- b. for law enforcement authorities to identify or apprehend an individual where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.

SECTION 15. AMENDATORY 63 O.S. 2001, Section 1-502.2, is amended to read as follows:

Section 1-502.2 A. Unless otherwise provided by law, all information and records which identify any person who has or may have any communicable or venereal disease which is required to be reported pursuant to Sections 1-501 through 1-532.1 of this title and which are held or maintained by any state agency, health care provider or facility, physician, health professional, laboratory, clinic, blood bank, funeral director, third party payor, or any other agency, person, or organization in the state shall be confidential. Any information authorized to be released pursuant to paragraphs 1 through ~~7~~ 8 of this subsection shall be released in such a way that no person can be identified unless otherwise

provided for in such paragraph or by law. Such information shall not be released except under the following circumstances:

1. Release is made upon court order;

2. Release is made in writing, by or with the written consent of the person whose information is being kept confidential or with the written consent of the legal guardian or legal custodian of such person, or if such person is a minor, with the written consent of the parent or legal guardian of such minor;

3. Release is necessary as determined by the State Department of Health to protect the health and well-being of the general public. Any such order for release by the Department and any review of such order shall be in accordance with the procedures specified in Sections 309 through 323 of Title 75 of the Oklahoma Statutes. Only the initials of the person whose information is being kept confidential shall be on public record for such proceedings unless the order by the Department specifies the release of the name of such person and such order is not appealed by such person or such order is upheld by the reviewing court;

4. Release is made of medical or epidemiological information to those persons who have had risk exposures pursuant to Section 1-502.1 of this title;

5. Release is made of medical or epidemiological information to health professionals, appropriate state agencies, or district courts to enforce the provisions of Sections 1-501 through 1-532.1 of this title and related rules and regulations concerning the control and treatment of communicable or venereal diseases;

6. Release is made of specific medical or epidemiological information for statistical purposes in such a way that no person can be identified; ~~or~~

7. Release is made of medical information among health care providers, their agents or employees, within the continuum of care for the purpose of diagnosis and treatment of the person whose

information is released. This exception shall not authorize the release of confidential information by a state agency to a health care provider unless such release is otherwise authorized by this section; or

8. When the patient is an inmate in the custody of the Department of Corrections or a private prison or facility under contract with the Department of Corrections, and the release of the information is necessary:

- a. to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and it is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat, or
- b. for law enforcement authorities to identify or apprehend an individual where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.

B. For the purposes of this section only, the words "written consent" shall mean that the person whose information is required to be kept confidential by this section or the person legally authorized to consent to release by this section has been informed of all persons or organizations to whom such information may be released or disclosed by the specific release granted. Releases granted pursuant to paragraph 2 of subsection A of this section shall include a notice in bold typeface that the information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but are not limited to, diseases such as hepatitis, syphilis, gonorrhea and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS). Consent obtained for release of information, pursuant to paragraph 2 of subsection A of this section, shall not be considered valid unless prior to consent,

the person consenting to the release was given notice of the provisions for release of confidential information pursuant to this section.

C. 1. The State Department of Health may convene a confidential meeting of a multidisciplinary team for recommendation on school placement of a student who is infected with the human immunodeficiency virus. The multidisciplinary team shall include, but not be limited to the following:

- a. the parent, parents, legal representative, or legal guardian or legal custodian of the student;
- b. the physician of the student;
- c. a representative from the superintendent's office of the affected school district;
- d. a representative from the State Department of Education; and
- e. a representative from the State Department of Health.

Each member of the team shall be responsible for protecting the confidentiality of the student and any information made available to such person as a member of the team. The multidisciplinary team shall be exempt from the requirements of Sections 301 through 314 of Title 25 of the Oklahoma Statutes and Sections 24A.1 through 24A.19 of Title 51 of the Oklahoma Statutes.

2. Each member of the local school board having jurisdiction over the student shall also be responsible for protecting the confidentiality of the student and any information made available to such person as a school board member.

D. The State Department of Health may convene a confidential meeting of a multidisciplinary advisory committee to make recommendations regarding the practice of health care workers who are infected with the human immunodeficiency virus (HIV) or hepatitis B (HBV), who may be performing exposure-prone procedures.

The membership of the multidisciplinary advisory committee shall include, but not be limited to, the following:

1. The Commissioner of Health or her designee;
2. Legal counsel to the Commissioner of Health;
3. The state epidemiologist or his designee;
4. An infectious disease specialist with expertise in HIV/HBV infection; and
5. Two practicing health care workers from the same discipline as the HIV/HBV-infected health care worker.

In addition, the health care worker being discussed, and/or an advocate, and the personal physician of the health care worker being discussed shall be invited to the multidisciplinary advisory committee meeting. Discussion of the case shall be made without using the actual name of the health care worker. Each member of the multidisciplinary advisory committee shall be responsible for protecting the confidentiality of the HIV/HBV-infected health care worker and the confidentiality of any information made available to such person as a member of the multidisciplinary advisory committee. The multidisciplinary advisory committee shall be exempt from the requirements of the Oklahoma Open Meetings Meeting Act, ~~Section 301 et seq. of Title 25 of the Oklahoma Statutes~~, and the Oklahoma Open Records Act, ~~Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes~~.

E. Upon advice of the multidisciplinary advisory committee, the Commissioner of Health, or her designee, may notify an appropriate official at the health care facility where the HIV/HBV-infected health care worker practices that said health care worker is seropositive for HIV and/or HBV. Notification shall be made only when necessary to monitor the ability of the HIV/HBV-infected health care worker to comply with universal precautions and appropriate infection control practices, and/or to monitor the ongoing functional capacity of the health care worker to perform his or her

duties. Notification shall occur through one of the following officials:

1. The facility administrator;
2. The hospital epidemiologist;
3. The chairman of the infection control committee of the

facility; or

4. The medical chief of staff of the facility.

F. If the HIV/HBV-infected health care worker fails or refuses to comply with the recommendations of the multidisciplinary advisory committee, the Commissioner of Health, or her designee, may take such actions as may be required to perform the duties imposed by the laws of the State of Oklahoma, and may advise the appropriate licensing board.

G. Any person who negligently, knowingly or intentionally discloses or fails to protect medical or epidemiological information classified as confidential pursuant to this section, upon conviction, shall be guilty of a misdemeanor punishable by the imposition of a fine of not less than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

H. Any person who negligently, knowingly or intentionally discloses or fails to protect medical or epidemiological information classified as confidential pursuant to this section shall be civilly liable to the person who is the subject of the disclosure for court costs, ~~attorneys~~ attorney fees, exemplary damages and all actual damages, including damages for economic, bodily or psychological harm which is proximately caused by the disclosure.

SECTION 16. AMENDATORY 63 O.S. 2001, Section 2-508, as amended by Section 1, Chapter 111, O.S.L. 2002 (63 O.S. Supp. 2003, Section 2-508), is amended to read as follows:

Section 2-508. A. Except as otherwise provided, all property described in paragraphs 1 and 2 of subsection A of Section 2-503 of

this title which is seized or surrendered pursuant to the provisions of the Uniform Controlled Dangerous Substances Act, ~~Section 2-101 et seq. of this title,~~ shall be destroyed. The destruction shall be done by or at the direction of the Oklahoma State Bureau of Investigation, who shall have the discretion prior to destruction to preserve samples of the substance for testing. In any county with a population of four hundred thousand (400,000) or more according to the latest Federal Decennial Census, there shall be a located site, approved by the Oklahoma State Bureau of Investigation, for the destruction of the property. Any such property submitted to the Oklahoma State Bureau of Investigation which it deems to be of use for investigative training, educational, or analytical purposes may be retained by the Oklahoma State Bureau of Investigation in lieu of destruction.

B. 1. With respect to controlled dangerous substances seized or surrendered pursuant to the provisions of the Uniform Controlled Dangerous Substances Act, municipal police departments, sheriffs, the Oklahoma Bureau of Narcotics and Dangerous Drugs Control Commission, the Oklahoma Highway Patrol, and the Oklahoma State Bureau of Investigation shall have the authority to destroy seized controlled dangerous substances when the amount seized in a single incident exceeds ten (10) pounds. The destroying agency shall:

- a. photograph the seized substance with identifying case numbers or other means of identification,
- b. prepare a report describing the seized substance prior to the destruction,
- c. retain at least one (1) pound of the substance randomly selected from the seized substance for the purpose of evidence, and
- d. obtain and retain samples of the substance from enough containers, bales, bricks, or other units of substance seized to establish the presence of a weight of the

substance necessary to establish a violation of the Trafficking in Illegal Drugs Act pursuant to subsection C of Section 2-415 of this title, if such a weight is present. If such weight is not present, samples of the substance from each container, bale, brick or other unit of substance seized shall be taken. Each sample taken pursuant to this section shall be large enough for the destroying agency and the defendant or suspect to have an independent test performed on the substance for purposes of identification.

2. If a defendant or suspect is known to the destroying agency, the destroying agency shall give at least seven (7) days' written notice to the defendant, suspect or counsel for the defendant or suspect of:

- a. the date, the time, and the place where the photographing will take place and notice of the right to attend the photographing, and
- b. the right to obtain samples of the controlled dangerous substance for independent testing and use as evidence.

3. The written notice shall also inform the defendant, suspect or counsel for the defendant or suspect that the destroying agency must be notified in writing within seven (7) days from receipt of the notice of the intent of the suspect or defendant to obtain random samples and make arrangements for the taking of samples. The samples for the defendant or suspect must be taken by a person licensed by the Drug Enforcement Administration. If the defendant or counsel for the defendant fails to notify the destroying agency in writing of an intent to obtain samples and fails to make arrangements for the taking of samples, a sample taken pursuant to

subparagraph d of paragraph 1 of this subsection shall be made available upon request of the defendant or suspect.

The representative samples, the photographs, the reports, and the records made under this section and properly identified shall be admissible in any court or administrative proceeding for any purposes for which the seized substance itself would have been admissible.

C. All other property not otherwise provided for in the Uniform Controlled Dangerous Substances Act which has come into the possession of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or a district attorney may be disposed of by order of the district court when no longer needed in connection with any litigation. If the owner of the property is unknown to the Bureau or district attorney, the Bureau shall hold the property for at least six (6) months prior to filing a petition for disposal with the district court except for laboratory equipment which may be forfeited when no longer needed in connection with litigation, unless the property is perishable. The Director or district attorney shall file a petition in the district court of Oklahoma County or in the case of a district attorney, the petition shall be filed in a county within the district attorney's jurisdiction requesting the authority to:

1. Conduct a sale of the property;

2. Convert title of the property to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or to the district attorney's office for donation or transfer in accordance with subsection I or K of this section; or

3. Convert title of the property to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control for the purpose of leasing the property in accordance with subsection J of this section.

The Director or district attorney shall attach to the petition a list describing the property, including all identifying numbers and

marks, if any, the date the property came into the possession of the Bureau or district attorney, and the name and address of the owner, if known. The notice of the hearing of the petition for the sale of the property, except laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the provisions of the Uniform Controlled Dangerous Substances Act, shall be given to every known owner, as set forth in the petition, by certified mail to the last-known address of the owner at least ten (10) days prior to the date of the hearing. Notice of a hearing on a petition for forfeiture or sale of laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the Uniform Controlled Dangerous Substances Act shall not be required. The notice shall contain a brief description of the property, and the location and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the county, one such place being the county courthouse at the regular place assigned for the posting of legal notices. At the hearing, if no owner appears and establishes ownership of the property, the court may enter an order authorizing the Director or district attorney to donate the property pursuant to subsection I of this section, to sell the property at a public auction to the highest bidder, or to convert title of the property to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control for the purpose of leasing or transferring the property pursuant to subsection J or K of this section after at least ten (10) days' notice has been given by publication in one issue of a legal newspaper of the county. If the property is offered for sale at public auction and no bid is received that exceeds fifty percent (50%) of the value of the property, such value to be announced prior to the sale, the Director or district attorney may refuse to sell the item pursuant to any bid received. The Director or district attorney shall make a return of

the sale and, when confirmed by the court, the order confirming the sale shall vest in the purchaser title to the property so purchased. The money received from the sale shall be used for the purpose of purchasing controlled dangerous substances to be used as evidence in narcotic cases and fees for informers, or employees and other associated expenses necessary to apprehend and convict violators of the laws of the State of Oklahoma regulating controlled dangerous substances. These funds shall be transferred to the agency special account established pursuant to Section 7.2 of Title 62 of the Oklahoma Statutes or the Bureau of Narcotics Revolving Fund or in the case of a district attorney, the revolving fund in that district for drug education and enforcement. The Director of the Bureau of Narcotics and Dangerous Drugs Control and the Director of State Finance are hereby authorized and directed to promulgate in writing the necessary rules and regulations requiring strict accountability relative to the expenditure of the above funds. In the case of a district attorney, the accountability relative to the expenditure of the fund shall be according to rules already existing for county revolving funds.

D. At the request of the Department of Public Safety, the district attorney or a designee of the district attorney may conduct any forfeiture proceedings as described in Section 2-503 of this title on any property subject to forfeiture as described in subsection A, B, or C of Section 2-503 of this title. Except as provided in subsection A of this section, all other property not otherwise provided for in the Uniform Controlled Dangerous Substances Act which has come into the possession of the Oklahoma Department of Public Safety may be disposed of by order of the district court when no longer needed in connection with any litigation. If the owner of the property is unknown to the Department, the Department shall hold the property for at least six (6) months prior to filing a petition for disposal with the district

court, unless the property is perishable. The Commissioner of Public Safety shall file a petition in the district court of Oklahoma County requesting the authority to conduct a sale of the property or to convert title of the property to the Oklahoma Department of Public Safety. The Commissioner of Public Safety shall attach to the petition a list describing the property, including all identifying numbers and marks, if any, the date the property came into the possession of the Department, and the name and address of the owner, if known. The notice of the hearing of the petition for the sale of the property shall be given to every known owner, as set forth in the petition, by certified mail to the last-known address of the owner and party in last possession if applicable, at least ten (10) days prior to the date of the hearing. The notice shall contain a brief description of the property, and the location and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the county, one such place being the county courthouse at the regular place assigned for the posting of legal notices. At the hearing, if no owner appears and establishes ownership of the property, the court may enter an order authorizing the Commissioner of Public Safety to donate the property pursuant to subsection I of this section, to sell the property to the highest bidder, or convert title of the property to the Oklahoma Department of Public Safety for the purpose of leasing or transferring the property pursuant to subsection J or K of this section after at least five (5) days' notice has been given by publication in one issue of a legal newspaper of the county. The Commissioner of Public Safety shall make a return of the sale and, when confirmed by the court, the order confirming the sale shall vest in the purchaser title to the property so purchased. The money received from the sale shall be deposited in the Department of Public Safety Revolving Fund and shall be expended for law enforcement purposes.

E. Except as provided in subsection A of this section, all other property not otherwise provided for in the Uniform Controlled Dangerous Substances Act which has come into the possession of the Alcoholic Beverage Laws Enforcement Commission may be disposed of by order of the district court when no longer needed in connection with any litigation. If the owner of the property is unknown to the Alcoholic Beverage Laws Enforcement Commission, the Commission shall hold the property for at least six (6) months prior to filing a petition for disposal with the district court, unless the property is perishable. The Director of the Alcoholic Beverage Laws Enforcement Commission shall file a petition in the district court of Oklahoma County requesting the authority to conduct a sale of the property or to convert title of the property to the Alcoholic Beverage Laws Enforcement Commission. The Director of the Alcoholic Beverage Laws Enforcement Commission shall attach to the petition a list describing the property, including all identifying numbers and marks, if any, the date the property came into the possession of the Alcoholic Beverage Laws Enforcement Commission, and the name and address of the owner, if known. The notice of the hearing of the petition for the sale of the property shall be given to every known owner, as set forth in the petition, by certified mail to the last-known address of the owner at least ten (10) days prior to the date of the hearing. The notice shall contain a brief description of the property, and the location and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the county, one such place being the county courthouse at the regular place assigned for the posting of legal notices. At the hearing, if no owner appears and establishes ownership of the property, the court may enter an order authorizing the Director of the Alcoholic Beverage Laws Enforcement Commission to donate the property pursuant to subsection I of this section or to sell the property to the highest bidder after at least five (5) days' notice

has been given by publication in one issue of a legal newspaper of the county. The Director of the Alcoholic Beverage Laws Enforcement Commission shall make a return of the sale and, when confirmed by the court, the order confirming the sale shall vest in the purchaser title to the property so purchased. The money received from the sale shall be deposited in the General Revenue Fund of the state.

F. Except as provided in subsection A of this section, all other property not otherwise provided for in the Uniform Controlled Dangerous Substances Act which has come into the possession of the Oklahoma State Bureau of Investigation may be disposed of by order of the district court when no longer needed in connection with any litigation. If the owner of the property is unknown to the Bureau, the Bureau shall hold the property for at least six (6) months prior to filing a petition for disposal with the district court, unless the property is perishable. The Director of the Oklahoma State Bureau of Investigation shall file a petition in the district court of Oklahoma County requesting the authority to conduct a sale of the property or to convert title of the property to the Oklahoma State Bureau of Investigation. The Director of the Oklahoma State Bureau of Investigation shall attach to the petition a list describing the property, including all identifying numbers and marks, if any, the date the property came into the possession of the Bureau, and the name and address of the owner, if known. The notice of the hearing of the petition for the sale of the property shall be given to every known owner, as set forth in the petition, by certified mail to the last-known address of the owner and party in last possession if applicable, at least ten (10) days prior to the date of the hearing. The notice shall contain a brief description of the property, and the location and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the county, one such place being the county courthouse at the regular place assigned for the posting of legal notices. At the hearing, if no owner

appears and establishes ownership of the property, the court may enter an order authorizing the Director of the Oklahoma State Bureau of Investigation to donate the property pursuant to subsection I of this section, to sell the property to the highest bidder, or convert title of the property to the Oklahoma State Bureau of Investigation for the purpose of leasing or transferring the property pursuant to subsection J or K of this section after at least five (5) days' notice has been given by publication in one issue of a legal newspaper of the county. The Director of the Oklahoma State Bureau of Investigation shall make a return of the sale and, when confirmed by the court, the order confirming the sale shall vest in the purchaser title to the property so purchased. The money received from the sale shall be deposited in the OSBI Revolving Fund and shall be expended for law enforcement purposes.

G. Except as provided in subsection A of this section, all other property not otherwise provided for in the Uniform Controlled Dangerous Substances Act which has come into the possession of the Oklahoma Department of Corrections after being seized from persons not in the custody or supervision of the Department of Corrections may be disposed of by order of the district court when no longer needed in connection with any litigation. If the owner of the property is unknown to the Department, the Department shall hold the property for at least six (6) months prior to filing a petition for disposal with the district court, unless the property is perishable. The Director of the Oklahoma Department of Corrections shall file a petition in the district court of the county of seizure requesting the authority to conduct a sale of the property or to convert title to the property to the Oklahoma Department of Corrections. The Director of the Oklahoma Department of Corrections shall attach to the petition a list describing the property, including all identifying numbers and marks, if any, the date the property came into possession of the Department and the name and address of the

owner, if known. The notice of the hearing of the petition for the sale of the property shall be given to every known owner, as set forth in the petition, by certified mail to the last-known address of the owner and party in last possession if applicable, at least ten (10) days prior to the date of the hearing. The notice shall contain a brief description of the property and the location and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the county, one such place being the county courthouse at the regular place assigned for the posting of legal notices. At the hearing, if no owner appears and establishes ownership of the property, the court may enter an order authorizing the Director of the Oklahoma Department of Corrections to donate the property pursuant to subsection I of this section, to sell the property to the highest bidder or convert title of the property to the Oklahoma Department of Corrections after at least five (5) days' notice has been given by publication in one issue of a legal newspaper of the county. The Director of the Oklahoma Department of Corrections shall make a return of the sale and when confirmed by the court, the order confirming the sale shall vest in the purchaser title to the property so purchased. Twenty-five percent (25%) of the money received from the sale shall be disbursed to a revolving fund in the office of the county treasurer of the county wherein the property was seized, said fund to be used as a revolving fund solely for enforcement of controlled dangerous substances laws, drug abuse prevention and drug abuse education. The remaining seventy-five percent (75%) shall be deposited in the Department of Corrections Revolving Fund to be expended for equipment for probation and parole officers and correctional officers.

H. Except as provided in subsection A of this section, all other property not otherwise provided for in the Uniform Controlled Dangerous Substances Act which has come into the possession of the

Office of the Attorney General may be disposed of by order of the district court when no longer needed in connection with any litigation. If the owner of the property is unknown to the Office, the Office shall hold the property for at least six (6) months prior to filing a petition for disposal with the district court, unless the property is perishable. The Office of the Attorney General shall file a petition in the district court of Oklahoma County requesting the authority to conduct a sale of the property or to convert title of the property to the Office of the Attorney General. The Office of the Attorney General shall attach to the petition a list describing the property, including all identifying numbers and marks, if any, the date the property came into the possession of the Office, and the name and address of the owner, if known. The notice of the hearing of the petition for the sale of the property shall be given to every known owner, as set forth in the petition, by certified mail to the last-known address of the owner and party in last possession, if applicable, at least ten (10) days prior to the date of the hearing. The notice shall contain a brief description of the property and the location and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the county, one such place being the county courthouse at the regular place assigned for the posting of legal notices. At the hearing, if no owner appears and establishes ownership of the property, the court may enter an order authorizing the Attorney General to donate the property pursuant to subsection I of this section, to sell the property to the highest bidder, or convert title of the property to the Office of the Attorney General for the purpose of leasing or transferring the property pursuant to subsection J or K of this section after at least five (5) days' notice has been given by publication in one issue of a legal newspaper of the county. The Attorney General shall make a return of the sale and, when confirmed by the court, the order confirming

the sale shall vest in the purchaser title to the property so purchased. The money received from the sale shall be deposited in the Attorney General Law Enforcement Revolving Fund and shall be expended for law enforcement purposes. The Office of the Attorney General may enter into agreements with municipal, county or state agencies to return to such an agency a percentage of proceeds of the sale of any property seized by the agency and forfeited under the provisions of this section.

I. Any property, including but not limited to uncontaminated laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the provisions of the Uniform Controlled Dangerous Substances Act, upon a court order, may be donated for classroom or laboratory use by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, Oklahoma Department of Public Safety, district attorney, the Alcoholic Beverage Laws Enforcement Commission, the Oklahoma Department of Corrections, or the Office of the Attorney General to any public secondary school or technology center school in this state or any institution of higher education within The Oklahoma State System of Higher Education.

J. Any vehicle or firearm which has come into the possession and title vested in the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation, or the Office of the Attorney General, may be offered for lease to any sheriff's office or police department in this state on an annual basis to assist with the enforcement of the provisions of the Uniform Controlled Dangerous Substances Act. Each agency shall promulgate rules, regulations and procedures for leasing vehicles and firearms. No fully automatic weapons will be subject to the leasing agreement. All firearms leased may be utilized only by C.L.E.E.T. certified officers who have received training in the type and class of weapon

leased. Every lessee shall be required to submit an annual report to the leasing agency stating the condition of all leased property. A lease agreement may be renewed annually at the option of the leasing agency. Upon termination of a lease agreement, the property shall be returned to the leasing agency for sale or other disposition. All funds derived from lease agreements or other disposition of property no longer useful to law enforcement shall be deposited in the agency's revolving fund and shall be expended for law enforcement purposes.

K. Before disposing of any property pursuant to subsections C through F of this section, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Alcoholic Beverage Laws Enforcement Commission, the Oklahoma State Bureau of Investigation, the Office of the Attorney General, or a district attorney shall notify the Department of Corrections and the Oklahoma Department of Career and Technology Education of the identity of any such property in their possession. The Department of Corrections and the Oklahoma Department of Career and Technology Education must respond within ten (10) days of such notification, as to whether or not such property could be used in the operations or training programs of either agency. Upon receipt of the response, the agency or district attorney that issued the notification shall negotiate as to which agency will be entitled to the use of the property, the purpose of the use and the duration of such use. Upon return of the property, the property may be disposed of as otherwise provided in this section. The agencies and any district attorney that are parties to any transfer of property pursuant to this subsection shall enter into written agreements to carry out any such transfer of property. Any such agreement may also provide for the granting of title to any property being transferred as the parties deem appropriate.

SECTION 17. AMENDATORY 76 O.S. 2001, Section 19, as last amended by Section 23, Chapter 390, O.S.L. 2003 (76 O.S. Supp. 2003, Section 19), is amended to read as follows:

Section 19. A. 1. Any person who is or has been a patient of a doctor, hospital, or other medical institution shall be entitled, upon request, to obtain access to the information contained in the patient's medical records, including any x-ray or other photograph or image.

2. Any person who is or has been a patient of a doctor, hospital, or other medical institution shall be furnished copies of all records, including any x-ray or other photograph or image, pertaining to that person's case upon request and upon the tender of the expense of the copy or copies. The cost of each copy to such person or to the legal representative of such person, not including any x-ray or other photograph or image, shall not exceed One Dollar (\$1.00) for the first page and fifty cents (\$0.50) for each subsequent page. The cost of each x-ray or other photograph or image to such person or to the legal representative of such person shall not exceed Five Dollars (\$5.00) or the actual cost of reproduction, whichever is less. The physician, hospital, or other medical professionals and institutions may charge a patient for the actual cost of mailing the patient's requested medical records, but may not charge a fee for searching, retrieving, reviewing, and preparing medical records of the person.

3. The provisions of paragraphs 1 and 2 of this subsection shall not apply to psychological or psychiatric records. In the case of psychological or psychiatric records, the patient shall not be entitled to copies unless access to the records is consented to by the treating physician or practitioner or is ordered by a court of competent jurisdiction upon a finding that it is in the best interests of the patient, but the patient may be provided access to information contained in the records, as provided in subsection B of

Section 1-109 of Title 43A of the Oklahoma Statutes. The patient or, if the patient is a minor child or a guardian has been appointed for the patient, the guardian of the patient may authorize the release of the psychiatric or psychological records of the patient to the patient's attorney, a third party payor, or a governmental entity. The execution of an authorization shall not be construed to authorize the patient personal access to the records or information.

B. 1. In cases involving a claim for personal injury or death against any practitioner of the healing arts or a licensed hospital, or a nursing facility or nursing home licensed pursuant to Section 1-1903 of Title 63 of the Oklahoma Statutes arising out of patient care, where any person has placed the physical or mental condition of that person in issue by the commencement of any action, proceeding, or suit for damages, or where any person has placed in issue the physical or mental condition of any other person or deceased person by or through whom the person rightfully claims, that person shall be deemed to waive any privilege granted by law concerning any communication made to a physician or health care provider with reference to any physical or mental condition or any knowledge obtained by the physician or health care provider by personal examination of the patient; provided that, before any communication, medical or hospital record, or testimony is admitted in evidence in any proceeding, it must be material and relevant to an issue therein, according to existing rules of evidence.

2. Any person who obtains any document pursuant to the provisions of this section shall provide copies of the document to any opposing party in the proceeding upon payment of the expense of copying the document pursuant to the provisions of this section.

C. This section shall not apply to the records of an inmate in a correctional institution when the correctional institution believes the release of such information to be a threat to the safety or security of the inmate or the institution.

SECTION 18. Sections 1 through 4, 7 through 12 and 15 of this act shall become effective November 1, 2004.

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.

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