

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2864

By: Worthen

COMMITTEE SUBSTITUTE

An Act relating to crimes and punishments; amending 21 O.S. 2001, Section 431, which relates to escaped prisoners; clarifying certain procedural issues concerning escaped inmates; amending 22 O.S. 2001, Section 991d, as last amended by Section 3, Chapter 374, O.S.L. 2005 (22 O.S. Supp. 2005, Section 991d), which relates to supervision fees; modifying fee collection requirements; requiring determination of payment methods; authorizing charge of certain fee; amending 57 O.S. 2001, Sections 549, as last amended by Section 3, Chapter 159, O.S.L. 2005 and 563.3, as amended by Section 2, Chapter 476, O.S.L. 2005 (57 O.S. Supp. 2005, Sections 549 and 563.3), which relate to the Oklahoma Corrections Act of 1967; expanding scope of powers and duties of State Board of Corrections; modifying performance monitoring requirements and fee provisions; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 431, is amended to read as follows:

Section 431. A. Every prisoner confined upon conviction for a criminal offense, who escapes from prison, may be pursued, retaken and imprisoned again, notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time when he is retaken, and he shall remain so imprisoned until tried for such escape, or discharged, on a failure to prosecute therefor.

B. The provisions of Section 152 of Title 22 of the Oklahoma Statutes shall not apply until the escaped prisoner is returned to the physical custody of the city, county, state, or federal jail or prison where imprisoned at the time of the escape, and no indictment, information, or arrest warrant shall be dismissed for

any reason regarding the failure to prosecute, until the prisoner is returned to the custody of the jail or prison.

SECTION 2. AMENDATORY 22 O.S. 2001, Section 991d, as last amended by Section 3, Chapter 374, O.S.L. 2005 (22 O.S. Supp. 2005, Section 991d), is amended to read as follows:

Section 991d. A. 1. When the court orders supervision by the Department of Corrections, or the district attorney requires the Department to supervise any person pursuant to a deferred prosecution agreement, the person shall be required to pay a supervision fee of Forty Dollars (\$40.00) per month during the supervision period, unless the fee would impose an unnecessary hardship on the person. In hardship cases, the Department shall expressly waive all or part of the fee. The court shall make payment of the fee a condition of the sentence which shall be imposed whether the supervision is incident to the suspending of execution of a sentence, incident to the suspending of imposition of a sentence, or incident to the deferral of proceedings after a verdict or plea of guilty. ~~The court clerk shall collect the supervision fee and may retain ten percent (10%) of such monies to be deposited in the Court Clerk Revolving Fund to cover administrative costs and shall remit the remainder to the Department of Corrections Revolving Fund created pursuant to Section 557 of Title 57 of the Oklahoma Statutes~~ Department shall determine methods for payment of the supervision fee and may charge a reasonable user fee for collection of supervision fees electronically. The Department is required to report to the sentencing court any failure of the person to pay supervision fees and to report immediately if the person violates any condition of the sentence.

2. When the court imposes a suspended or deferred sentence and does not order supervision by the Department of Corrections, the offender shall be required to pay to the district attorney a supervision fee of Twenty Dollars (\$20.00) per month. In hardship

cases, the district attorney shall expressly waive all or part of the fee.

3. If restitution is ordered by the court in conjunction with supervision, the supervision fee will be paid in addition to the restitution ordered. In addition to the restitution payment and supervision fee, a reasonable user fee may be charged by the Department of Corrections to cover the expenses of administration of the restitution, except no user fee shall be collected by the Department when restitution payment is collected and disbursed to the victim by the office of the district attorney as provided in Section 991f of this title or Section 991f-1.1 of this title.

B. The Pardon and Parole Board shall require a supervision fee to be paid by the parolee as a condition of parole which shall be paid to the Department of Corrections. The Department shall determine the amount of the fee as provided for other persons under supervision by the Department.

C. Upon acceptance of an offender by the Department of Corrections whose probation or parole supervision was transferred to Oklahoma through the Interstate Compact Agreement, or upon the assignment of an inmate to any community placement, a fee shall be required to be paid by the offender to the Department of Corrections as provided for other persons under supervision of the Department.

D. Except as provided in subsection A and this subsection, all fees collected pursuant to this section shall be deposited in the Department of Corrections Revolving Fund created pursuant to Section 557 of Title 57 of the Oklahoma Statutes. For the fiscal year ending June 30, 1996, fifty percent (50%) of all collections received from offenders placed on supervision after July 1, 1995, shall be transferred to the credit of the General Revenue Fund of the State Treasury until such time as total transfers equal Three Million Three Hundred Thousand Dollars (\$3,300,000.00).

SECTION 3. AMENDATORY 57 O.S. 2001, Section 549, as last amended by Section 3, Chapter 159, O.S.L. 2005 (57 O.S. Supp. 2005, 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 and other receipted funds on behalf of the inmate, to apportion inmate wages and funds in accordance with the law; and the duty to preserve those wages and funds 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 and other receipted funds 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 and funds 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 funds held by the Department of Corrections on behalf 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.

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 4. AMENDATORY 57 O.S. 2001, Section 563.3, as amended by Section 2, Chapter 476, O.S.L. 2005 (57 O.S. Supp. 2005, Section 563.3), is amended to read as follows:

Section 563.3 A. A private prison contractor which does not have a contract with the Department of Corrections, but which houses federal inmates or inmates of another state, within two (2) months of commencing operations and thereafter as required by the Department of Corrections, shall:

1. Obtain from the Department of Corrections approval of all emergency response plans and the internal and perimeter security of the facility of the private prison contractor. All emergency plans for the private prison facility shall be approved by the Department

of Corrections annually on July 1 and within thirty (30) days of any subsequent change or modification to any plan. Such approval shall be given only if the Director of the Department of Corrections determines that the security and emergency response plan are adequate to protect the public;

2. Show, to the satisfaction of the Department of Corrections, that adequate food, housing and medical care shall be available for inmates, that the facility will have the necessary qualified personnel to operate the facility, that the financial condition of the private prison contractor is such that the facility can be operated adequately, and that the facility has the ability to comply with applicable court orders and American Correctional Association standards;

3. Furnish to the Department of Corrections satisfactory proof that the private prison contractor has obtained insurance or is self-insured, in such a manner and in such an amount as the Director of the Department of Corrections, after consulting with the Risk Management Administration, may deem necessary and adequate to reimburse this state or a political subdivision of this state, for expenses arising from any incident which occurs at said prison or which requires intervention by this state or a political subdivision of this state. Such insurance, in addition, shall be in an amount sufficient to indemnify this state and its officers and employees, for any liability or other loss, including property damage, judgments, costs, attorneys fees or other expenses arising from the operation of the facility, and such facility shall in any event and regardless of the amount of insurance available indemnify and hold harmless this state and its officers and employees, for any and all acts of prison inmates, and/or all officers, employees and stockholders of such private prison contractor for any liability arising out of acts of said inmates, officers, employees and stockholders of such private prison contractor in relation to the

operation of the facility. The insurance required by this paragraph shall not provide coverage for more than one facility. If the private prison contractor owns or operates more than one facility, separate insurance coverage shall be obtained or provided for each facility;

4. Obtain written authorization from the governing board of any municipality in which the facility is to be located, or if the facility is not to be located within a municipality, written authorization from the board of county commissioners of the county in which the facility is to be located; and

5. Require and obtain a felony record search of fingerprints of every employee or prospective employee of the private prison contractor. The search shall be based on fingerprints and shall be conducted either by the Federal Bureau of Investigation or the Oklahoma State Bureau of Investigation. If the search is conducted by the Oklahoma State Bureau of Investigation, the Bureau shall require the person to pay a search fee not to exceed Fifty Dollars (\$50.00) or the cost of the search, whichever is the lesser amount. The fees shall be deposited in the OSBI Revolving Fund. The private prison contractor is hereby authorized to reimburse employees for the cost of the search. The Oklahoma State Bureau of Investigation may contact the Federal Bureau of Investigation as regards the information requested, to obtain any felony convictions of the person involved. The record required by this paragraph shall include the name of the person, whether or not said person has been convicted of any felony offense, a list of any felony convictions, and the dates of such convictions. The search records of each employee shall be maintained by the contractor for as long as the employee works for the contractor. The records shall be subject to inspection by the Department of Corrections.

B. A private prison contractor which does not have a contract with the Department of Corrections, but which houses federal inmates

or inmates of another state shall attain accreditation by the American Correctional Association within three (3) years of commencing operation of the facility and thereafter shall maintain such accreditation.

C. The Department of Corrections shall monitor the performance of the private prison contractor and the continued compliance of the private prison contractor with the provisions of subsections A and B of this section. If at any time after commencing operations, a private prison contractor, that is subject to the provisions of subsection A of this section, fails to comply with any of said provisions, the Director of the Department of Corrections may order the facility to take corrective action pursuant to the Department of Corrections monitoring plan. If corrective action is not pursued by the facility with due diligence, the Director of the Department of Corrections shall order the facility to cease operations. If a private prison contractor fails to attain or maintain the accreditation required by subsection B of this section, the Director of the Department of Corrections shall order the facility to cease operations. This order may be enforced by injunction issued by a district court of this state.

D. The Department of Corrections may charge the private prison contractor a reasonable fee for any services provided by the Department staff to include, but not be limited to, the costs of monitoring compliance with the provisions of paragraphs 1 and 2 of subsection A of this section. The fee shall not exceed the cost incurred in performing the monitoring.

E. The Department of Corrections shall promulgate and adopt rules for the implementation of this section.

F. All fees collected by the Department of Corrections pursuant to this section shall be deposited with the State Treasurer to the credit of the Department of Corrections Revolving Fund.

SECTION 5. 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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