

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 678 By: Corn of the Senate
3 and
4 Billy of the House
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8 (criminal procedure - membership of the Oklahoma
9 Sentencing Commission - effective date -
10 emergency)
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13 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
14 entire bill and insert

15 "An Act relating to criminal procedure and
16 corrections; amending 22 O.S. 2001, Section 1502, as
17 amended by Section 1, Chapter 340, O.S.L. 2003 (22
18 O.S. Supp. 2006, Section 1502), which relates to
19 membership of the Oklahoma Sentencing Commission;
20 modifying membership; amending 47 O.S. 2001, Section
21 151, which relates to state vehicles; exempting
22 certain vehicles within the Department of
23 Corrections; amending 57 O.S. 2001, Section 510, as
24 last amended by Section 5, Chapter 294, O.S.L. 2006
(57 O.S. Supp. 2006, Section 510), which relates to
director's power and duties; authorizing certain
advertising in certain materials; exempting sale
from the Central Purchasing Act and the
Administrative Rules Act; directing promulgation of
rules for certain purpose; amending 57 O.S. 2001,
Section 566, as last amended by Section 2, Chapter
31, O.S.L. 2006 (57 O.S. Supp. 2006, Section 566),
which relates to definitions for claims; expanding

1 application of definitions; repealing 57 O.S. 2001,
2 Section 567, which relates to bonds; providing an
3 effective date; and declaring an emergency.
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5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

6 SECTION 1. AMENDATORY 22 O.S. 2001, Section 1502, as
7 amended by Section 1, Chapter 340, O.S.L. 2003 (22 O.S. Supp. 2006,
8 Section 1502), is amended to read as follows:

9 Section 1502. A. The Oklahoma Sentencing Commission shall
10 consist of ~~fifteen (15)~~ seventeen (17) members as follows:

11 1. The Chief Justice of the Oklahoma Supreme Court shall
12 appoint a sitting Justice of the Oklahoma Supreme Court who shall
13 serve an initial term of four (4) years;

14 2. The Director of the Administrative Office of the Courts
15 shall appoint an indigent defender, who shall serve an initial term
16 of three (3) years;

17 3. One member, to be appointed by the Governor, who shall serve
18 an initial term of one (1) year;

19 4. Two members of the House of Representatives, one of whom
20 shall be a Republican and one of whom shall be a Democrat, to be
21 appointed by the Speaker of the House of Representatives, each of
22 whom shall serve an initial term of two (2) years;

23 5. Two members of the Senate, one of whom shall be a Republican
24 and one of whom shall be a Democrat, to be appointed by the

1 President Pro Tempore of the Senate, each of whom shall serve an
2 initial term of two (2) years;

3 6. A district attorney appointed by the District Attorneys
4 Council who shall serve an initial term of five (5) years; provided,
5 any person appointed pursuant to this paragraph who is no longer
6 serving as a district attorney shall not continue to serve on the
7 Commission;

8 7. The Attorney General, the first assistant Attorney General,
9 or the chief of the criminal division of the Office of Attorney
10 General;

11 8. The Director of State Finance or ~~the director of the budget~~
12 ~~division of the Office of State Finance~~ a designee;

13 9. A defense attorney appointed by the Oklahoma Bar
14 Association, who shall serve an initial term of five (5) years;

15 10. A judge of the district court appointed by the assembly of
16 presiding judges, who shall serve an initial term of three (3)
17 years; provided, any person appointed pursuant to this paragraph who
18 is no longer serving as a district judge shall not continue to serve
19 on the Commission;

20 11. A crime victim or representative of crime victims appointed
21 by the other fourteen members of the Commission from a list of five
22 persons submitted to the Commission by the Victim's Compensation
23 Board, who shall serve an initial term of four (4) years;

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1 12. The director of the Oklahoma Indigent Defense System, the
2 deputy director of the Oklahoma Indigent Defense System or the chief
3 of the noncapital trial division of the Oklahoma Indigent Defense
4 System; and

5 13. The director of the Oklahoma State Bureau of Investigation
6 ~~or the deputy director of the Oklahoma State Bureau of Investigation~~
7 a designee;

8 14. The Director of the Department of Corrections, or the
9 Associate Director of the Department of Corrections as designee; and

10 15. One member, to be appointed by the Governor, who shall be
11 from a faith-based organization that specializes in providing prison
12 reintegration services for inmates.

13 B. All members of the Commission shall be voting members.

14 SECTION 2. AMENDATORY 47 O.S. 2001, Section 151, is
15 amended to read as follows:

16 Section 151. A. A state agency that owns vehicles shall affix
17 the words "State of Oklahoma" and the name of the department or
18 institution that owns or leases the vehicle in conspicuous letters.

19 B. 1. In lieu of the provisions of subsection A of this
20 section, Department of Public Safety vehicles used regularly as
21 patrol units shall be distinctively painted black and white and
22 shall bear the wording "Oklahoma Highway Patrol" on each side of the
23 vehicle in letters of such size as to be easily distinguishable, it
24 being the purpose and intention of the Legislature that said patrol

1 units shall be marked in the future in the same manner as those now
2 in use.

3 2. The Commissioner of Public Safety may designate colors and
4 markings, in lieu of those authorized by the provisions of this
5 section, for patrol units used for patrol purposes and for selective
6 traffic law enforcement.

7 C. Oklahoma State Bureau of Narcotics and Dangerous Drugs
8 Control vehicles for use in undercover investigations and Oklahoma
9 State Bureau of Investigation vehicles shall not be subject to the
10 provisions of this section.

11 D. The Department of Corrections vehicles designated for use by
12 probation and parole operations and other administrative operations,
13 as approved by the Director of the Department of Corrections, shall
14 not be subject to the provisions of this section.

15 SECTION 3. AMENDATORY 57 O.S. 2001, Section 510, as last
16 amended by Section 5, Chapter 294, O.S.L. 2006 (57 O.S. Supp. 2006,
17 Section 510), is amended to read as follows:

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

21 1. To appoint, subject to the approval of the State Board of
22 Corrections, a warden or superintendent for each penal institution,
23 who shall qualify for the position by character, personality,
24 ability, training, and successful administrative experience in the

1 correctional field; and if the person is not the incumbent warden or
2 superintendent of a penal institution, the person shall have a
3 college degree with a major in the behavioral sciences. As used in
4 this section, "major in the behavioral sciences" means a major in
5 psychology, sociology, criminology, education, corrections, human
6 relations, guidance and counseling, administration, criminal justice
7 administration, or penology;

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

13 a. the minimum age for service shall be twenty-one (21)
14 years of age. The Director shall have the authority
15 to establish the maximum age for correctional officers
16 entering service,

17 b. possession of a minimum of thirty (30) semester hours
18 from an accredited college or university, or
19 possession of a high school diploma acquired from an
20 accredited high school or GED equivalent testing
21 program and graduation from a training course
22 conducted by or approved by the Department and
23 certified by the Council on Law Enforcement Education

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1 and Training either prior to employment or during the
2 first six (6) months of employment,

3 c. be of good moral character,

4 d. before going on duty alone, satisfactory completion of
5 an adequate training program for correctional officers
6 and guards, as prescribed and approved by the State
7 Board of Corrections,

8 e. satisfactory completion of minimum testing or
9 professional evaluation through the Merit System of
10 Personnel Administration to determine the fitness of
11 the individual to serve in the position written
12 evaluations shall be submitted to the Department of
13 Corrections, and

14 f. satisfactory completion of a physical in keeping with
15 the conditions of the job description on an annual
16 basis and along the guidelines as established by the
17 Department of Corrections;

18 3. To designate as peace officers qualified personnel in any
19 Department of Corrections job classifications. The Director shall
20 designate as peace officers correctional officers who are employed
21 in positions requiring said designation. The peace officer
22 authority of employees designated as peace officers shall be limited
23 to: maintaining custody of prisoners; preventing attempted escapes;
24 pursuing, recapturing and incarcerating escapees and parole or

1 probation violators and arresting such escapees, parole or probation
2 violators, serving warrants, and performing any duties specifically
3 required for the job descriptions. Such powers and duties of peace
4 officers may be exercised for the purpose of maintaining custody,
5 security, and control of any prisoner being transported outside this
6 state as authorized by the Uniform Criminal Extradition Act. To
7 become qualified for designation as peace officers, employees shall
8 meet the training and screening requirements conducted by the
9 Department and certified by the Council on Law Enforcement Education
10 and Training within twelve (12) months of employment or, in the case
11 of employees designated as peace officers on or before July 1, 1997,
12 by July 1, 1998, and shall not be subject to Section 3311 of Title
13 70 of the Oklahoma Statutes;

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

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

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

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

13 7. To regulate the operation of canteens for prisoners;

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

20 9. To transfer prisoners from one institution to another;

21 10. To transfer to a state hospital for the mentally ill for
22 care and treatment, any prisoner who appears to be mentally ill.

23 The prisoner shall be returned to the institution when the
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1 superintendent of the hospital certifies that the prisoner has been
2 restored to mental health;

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

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

11 13. To maintain a program of research and statistics;

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

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

1 16. To provide clerical services for, and keep and preserve the
2 files and records of, the Pardon and Parole Board; make
3 investigations and inquiries as to prisoners at the institutions who
4 are to be, or who might be, considered for parole or other clemency;
5 assist prisoners who are to be, or who might be, considered for
6 parole or discharge in obtaining suitable employment in the event of
7 parole or discharge; report to the Pardon and Parole Board, for
8 recommendation to the Governor, violations of terms and conditions
9 of paroles; upon request of the Governor, make investigations and
10 inquiries as to persons who are to be, or who might be, considered
11 for reprieves or leaves of absence; report to the Pardon and Parole
12 Board, for recommendation to the Governor, whether a parolee is
13 entitled to a pardon, when the terms and conditions of the parole
14 have been completed; make presentence investigations for, and make
15 reports thereof to, trial judges in criminal cases before sentences
16 are pronounced; supervise persons undergoing suspended sentences, or
17 who are on probation or parole; and develop and operate, subject to
18 the policies and guidelines of the Board, work-release centers,
19 community treatment facilities or prerelease programs at appropriate
20 sites throughout this state;

21 17. To establish an employee tuition assistance program and
22 promulgate rules in accordance with the Administrative Procedures
23 Act for the operation of the program. The rules shall include, but
24 not be limited to, program purposes, eligibility requirements, use

1 of tuition assistance, service commitment to the Department,
2 reimbursement of tuition assistance funds for failure to complete
3 course work or service commitment, amounts of tuition assistance and
4 limitations, and record keeping;

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

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

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

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

8 21. To authorize any division of the Department to sell
9 advertising in any Department-approved publication, media production
10 or other informational material produced by the Department;
11 provided, that such advertising shall be approved by the Director or
12 designee prior to acceptance for publication. The sale of
13 advertising and negotiation of rates for the advertising shall not
14 be subject to The Oklahoma Central Purchasing Act or the
15 Administrative Procedures Act. The Department shall promulgate
16 rules establishing criteria for accepting or using advertisements as
17 authorized in this paragraph.

18 B. When an employee of the Department of Corrections has been
19 charged with a violation of the rules of the Department or with a
20 felony pursuant to the provisions of a state or federal statute, the
21 Director may, in the Director's discretion, suspend the charged
22 employee, in accordance with the Oklahoma Personnel Act and/or the
23 Merit System of Personnel Administration Rules, pending the hearing
24 and final determination of the charges. Notice of suspension shall

1 be given by the Director, in accordance with the provisions of the
2 Oklahoma Personnel Act. If after completion of the investigation of
3 the charges, it is determined that such charges are without merit or
4 are not sustained before the Oklahoma Merit Protection Commission or
5 in a court of law, the employee shall be reinstated and shall be
6 entitled to receive all lost pay and benefits.

7 This subsection shall in no way deprive an employee of the right
8 of appeal according to the Oklahoma Personnel Act.

9 SECTION 4. AMENDATORY 57 O.S. 2001, Section 566, as last
10 amended by Section 2, Chapter 31, O.S.L. 2006 (57 O.S. Supp. 2006,
11 Section 566), is amended to read as follows:

12 Section 566. A. Any action by an inmate initiated against any
13 person, party or entity, the state, the Department of Corrections,
14 an entity contracting with the Department of Corrections to provide
15 correctional services, another state agency, or political
16 subdivision, or an original action in an appellate court, or an
17 appeal of an action whether or not the plaintiff was represented in
18 the district court, may be:

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

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

4 B. As used in this ~~section~~ title:

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

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

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

18 C. If the court determines from the pleadings or the evidence
19 that one or more of the causes of action are frivolous or malicious,
20 any one or more of the following sanctions may be imposed, after
21 notice to the inmate and an opportunity for the inmate to respond,
22 without the need for an additional hearing:

23 1. Award attorney fees and actual costs incurred by the state,
24 the Department of Corrections, another state agency, a political

1 subdivision, the Attorney General's Office, or the defendant, not to
2 exceed Two Thousand Five Hundred Dollars (\$2,500.00) per frivolous
3 cause of action;

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

6 3. Order the Department of Corrections to revoke up to seven
7 hundred twenty (720) earned credits accrued by the inmate. In any
8 case in which the prisoner submits a frivolous or malicious claim,
9 or one that is intended solely or primarily for delay or to harass
10 the party filed against, or testifies falsely or otherwise presents
11 false evidence or information to the court in depositions or in a
12 notarized statement to the court or commits a fraud upon the court,
13 the prisoner shall suffer a loss of earned credits. The earned
14 credits shall be deducted upon a finding of fact and an order of the
15 court. In the absence of such a finding by the court and upon
16 review and recommendation by the Office of the Attorney General, a
17 prison disciplinary hearing may be held to determine whether the
18 prisoner has filed such a claim or evidence. Upon such a finding,
19 the earned credits of the prisoner shall be revoked by the
20 Department or political subdivision;

21 4. Order the Department or political subdivision to revoke
22 permission to have nonessential personal property of the inmate,
23 including, but not limited to, televisions, radios, stereos, or tape
24 recorders. If permission is revoked, the Department shall take

1 appropriate precautions to protect the property during the period of
2 the revocation;

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

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

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

14 SECTION 5. REPEALER 57 O.S. 2001, Section 567, is hereby
15 repealed.

16 SECTION 6. This act shall become effective July 1, 2007.

17 SECTION 7. It being immediately necessary for the preservation
18 of the public peace, health and safety, an emergency is hereby
19 declared to exist, by reason whereof this act shall take effect and
20 be in full force from and after its passage and approval."

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1 Passed the House of Representatives the 16th day of April, 2007.

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4 Presiding Officer of the House of
Representatives
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6 Passed the Senate the ____ day of _____, 2007.

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9 Presiding Officer of the Senate
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