

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 SENATE BILL NO. 678

6 By: Corn of the Senate

7 and

8 Billy of the House

9 COMMITTEE SUBSTITUTE

10 ( criminal procedure - membership of the Oklahoma

11 Sentencing Commission - effective date -

12 emergency )

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15  
16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

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

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

10          5. Two members of the Senate, one of whom shall be a Republican  
11 and one of whom shall be a Democrat, to be appointed by the  
12 President Pro Tempore of the Senate, each of whom shall serve an  
13 initial term of two (2) years;

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

19          7. The Attorney General, the first assistant Attorney General,  
20 or the chief of the criminal division of the Office of Attorney  
21 General;

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

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

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

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

12           12. The director of the Oklahoma Indigent Defense System, the  
13 deputy director of the Oklahoma Indigent Defense System or the chief  
14 of the noncapital trial division of the Oklahoma Indigent Defense  
15 System; ~~and~~

16           13. The director of the Oklahoma State Bureau of Investigation  
17 ~~or the deputy director of the Oklahoma State Bureau of Investigation~~  
18 a designee;

19           14. The Director of the Department of Corrections, or the  
20 Associate Director of the Department of Corrections as designee; and

21           15. One member, to be appointed by the Oklahoma Partnership for  
22 Successful Reentry.

23           B. All members of the Commission shall be voting members.  
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1 SECTION 2. AMENDATORY 47 O.S. 2001, Section 151, is  
2 amended to read as follows:

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

6 B. 1. In lieu of the provisions of subsection A of this  
7 section, Department of Public Safety vehicles used regularly as  
8 patrol units shall be distinctively painted black and white and  
9 shall bear the wording "Oklahoma Highway Patrol" on each side of the  
10 vehicle in letters of such size as to be easily distinguishable, it  
11 being the purpose and intention of the Legislature that said patrol  
12 units shall be marked in the future in the same manner as those now  
13 in use.

14 2. The Commissioner of Public Safety may designate colors and  
15 markings, in lieu of those authorized by the provisions of this  
16 section, for patrol units used for patrol purposes and for selective  
17 traffic law enforcement.

18 C. Oklahoma State Bureau of Narcotics and Dangerous Drugs  
19 Control vehicles for use in undercover investigations and Oklahoma  
20 State Bureau of Investigation vehicles shall not be subject to the  
21 provisions of this section.

22 D. The Department of Corrections vehicles designated for use by  
23 probation and parole operations and other administrative operations,  
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1 as approved by the Director of the Department of Corrections, shall  
2 not be subject to the provisions of this section.

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

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

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

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

- 1 a. the minimum age for service shall be twenty-one (21)  
2 years of age. The Director shall have the authority  
3 to establish the maximum age for correctional officers  
4 entering service,
- 5 b. possession of a minimum of thirty (30) semester hours  
6 from an accredited college or university, or  
7 possession of a high school diploma acquired from an  
8 accredited high school or GED equivalent testing  
9 program and graduation from a training course  
10 conducted by or approved by the Department and  
11 certified by the Council on Law Enforcement Education  
12 and Training either prior to employment or during the  
13 first six (6) months of employment,
- 14 c. be of good moral character,
- 15 d. before going on duty alone, satisfactory completion of  
16 an adequate training program for correctional officers  
17 and guards, as prescribed and approved by the State  
18 Board of Corrections,
- 19 e. satisfactory completion of minimum testing or  
20 professional evaluation through the Merit System of  
21 Personnel Administration to determine the fitness of  
22 the individual to serve in the position written  
23 evaluations shall be submitted to the Department of  
24 Corrections, and

1 f. satisfactory completion of a physical in keeping with  
2 the conditions of the job description on an annual  
3 basis and along the guidelines as established by the  
4 Department of Corrections;

5 3. To designate as peace officers qualified personnel in any  
6 Department of Corrections job classifications. The Director shall  
7 designate as peace officers correctional officers who are employed  
8 in positions requiring said designation. The peace officer  
9 authority of employees designated as peace officers shall be limited  
10 to: maintaining custody of prisoners; preventing attempted escapes;  
11 pursuing, recapturing and incarcerating escapees and parole or  
12 probation violators and arresting such escapees, parole or probation  
13 violators, serving warrants, and performing any duties specifically  
14 required for the job descriptions. Such powers and duties of peace  
15 officers may be exercised for the purpose of maintaining custody,  
16 security, and control of any prisoner being transported outside this  
17 state as authorized by the Uniform Criminal Extradition Act. To  
18 become qualified for designation as peace officers, employees shall  
19 meet the training and screening requirements conducted by the  
20 Department and certified by the Council on Law Enforcement Education  
21 and Training within twelve (12) months of employment or, in the case  
22 of employees designated as peace officers on or before July 1, 1997,  
23 by July 1, 1998, and shall not be subject to Section 3311 of Title  
24 70 of the Oklahoma Statutes;

1           4. To maintain such industries, factories, plants, shops,  
2 farms, and other enterprises and operations, hereinafter referred to  
3 as prison industries, at each institution as the State Board of  
4 Corrections deems necessary or appropriate to employ the prisoners  
5 or teach skills, or to sustain the institution; and as provided for  
6 by policies established by the State Board of Corrections, to allow  
7 compensation for the work of the prisoners, and to provide for  
8 apportionment of inmate wages, the amounts thus allowed to be kept  
9 in accounts by the Board for the prisoners and given to the inmates  
10 upon discharge from the institution, or upon an order paid to their  
11 families or dependents or used for the personal needs of the  
12 prisoners. Any industry that employs prisoners shall be deemed a  
13 "State Prison Industry" if the prisoners are paid from state funds  
14 including the proceeds of goods sold as authorized by Section 123f  
15 of Title 74 of the Oklahoma Statutes. Any industry in which wages  
16 of prisoners are paid by a nongovernmental person, group, or  
17 corporation, except those industries employing prisoners in work-  
18 release centers under the authority of the Department of Corrections  
19 shall be deemed a "Private Prison Industry";

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

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

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

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

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

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

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

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

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

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

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

11        16. To provide clerical services for, and keep and preserve the  
12 files and records of, the Pardon and Parole Board; make  
13 investigations and inquiries as to prisoners at the institutions who  
14 are to be, or who might be, considered for parole or other clemency;  
15 assist prisoners who are to be, or who might be, considered for  
16 parole or discharge in obtaining suitable employment in the event of  
17 parole or discharge; report to the Pardon and Parole Board, for  
18 recommendation to the Governor, violations of terms and conditions  
19 of paroles; upon request of the Governor, make investigations and  
20 inquiries as to persons who are to be, or who might be, considered  
21 for reprieves or leaves of absence; report to the Pardon and Parole  
22 Board, for recommendation to the Governor, whether a parolee is  
23 entitled to a pardon, when the terms and conditions of the parole  
24 have been completed; make presentence investigations for, and make

1 reports thereof to, trial judges in criminal cases before sentences  
2 are pronounced; supervise persons undergoing suspended sentences, or  
3 who are on probation or parole; and develop and operate, subject to  
4 the policies and guidelines of the Board, work-release centers,  
5 community treatment facilities or prerelease programs at appropriate  
6 sites throughout this state;

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

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

21 19. To provide reintegration referral services to any person  
22 discharged from the state custody who has volunteered to receive  
23 reintegration referral services. The Director may assign staff to  
24 refer persons discharged from state custody to services. The

1 Director shall promulgate rules for the referral process. All  
2 reintegration referral services shall be subject to the availability  
3 of funds; ~~and~~

4 20. To conduct continual planning and research and periodically  
5 evaluate the effectiveness of the various correctional programs  
6 instituted by the Department; manage the designing, building, and  
7 maintaining of all the capital improvements of the Department;  
8 establish and maintain current and efficient business, bookkeeping,  
9 and accounting practices and procedures for the operations of all  
10 institutions and facilities, and for the Department's fiscal  
11 affairs; conduct initial orientation and continuing in-service  
12 training for the Department employees; provide public information  
13 services; inspect and examine the condition and management of state  
14 penal and correctional institutions; investigate complaints  
15 concerning the management of prisons or alleged mistreatment of  
16 inmates thereof; and hear and investigate complaints as to  
17 misfeasance or nonfeasance of employees of the Department; and

18 21. To authorize any division of the Department to sell  
19 advertising in any Department-approved publication, media production  
20 or other informational material produced by the Department;  
21 provided, that such advertising shall be approved by the Director or  
22 designee prior to acceptance for publication. The sale of  
23 advertising and negotiation of rates for the advertising shall not  
24 be subject to The Oklahoma Central Purchasing Act or the

1 Administrative Procedures Act. The Department shall promulgate  
2 rules establishing criteria for accepting or using advertisements as  
3 authorized in this paragraph.

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

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

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

22 Section 566. A. Any action by an inmate initiated against any  
23 person, party or entity, the state, the Department of Corrections,  
24 an entity contracting with the Department of Corrections to provide

1 correctional services, another state agency, or political  
2 subdivision, or an original action in an appellate court, or an  
3 appeal of an action whether or not the plaintiff was represented in  
4 the district court, may be:

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

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

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

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

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

24

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

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

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

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

15           3. Order the Department of Corrections to revoke up to seven  
16 hundred twenty (720) earned credits accrued by the inmate. In any  
17 case in which the prisoner submits a frivolous or malicious claim,  
18 or one that is intended solely or primarily for delay or to harass  
19 the party filed against, or testifies falsely or otherwise presents  
20 false evidence or information to the court in depositions or in a  
21 notarized statement to the court or commits a fraud upon the court,  
22 the prisoner shall suffer a loss of earned credits. The earned  
23 credits shall be deducted upon a finding of fact and an order of the  
24 court. In the absence of such a finding by the court and upon

1 review and recommendation by the Office of the Attorney General, a  
2 prison disciplinary hearing may be held to determine whether the  
3 prisoner has filed such a claim or evidence. Upon such a finding,  
4 the earned credits of the prisoner shall be revoked by the  
5 Department or political subdivision;

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

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

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

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

23 SECTION 5. REPEALER 57 O.S. 2001, Section 567, is hereby  
24 repealed.

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

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

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7 51-1-7784 SD 04/05/07  
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