

1 ENGROSSED HOUSE
2 BILL NO. 2953

By: Tibbs of the House

3 and

4 Corn of the Senate
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7 An Act relating to prisons and reformatories;
8 amending 51 O.S 2001, Section 152, as last amended by
9 Section 1, Chapter 139, O.S.L. 2007 (51 O.S. Supp.
10 2007, Section 152), which relates to The Governmental
11 Tort Claims Act; modifying definition; amending 57
12 O.S. 2001, Section 37, as amended by Section 3,
13 Chapter 239, O.S.L. 2004 (57 O.S. Supp. 2007, Section
14 37), which relates to capacity of correctional
15 facilities; giving Department of Corrections sole
16 discretion in scheduling receptions; amending 57 O.S.
17 2001, Section 58.3, which relates to credits for
18 prisoner labor; increasing credit amount; and
19 providing an effective date.

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

21 SECTION 1. AMENDATORY 51 O.S. 2001, Section 152, as last
22 amended by Section 1, Chapter 139, O.S.L. 2007 (51 O.S. Supp. 2007,
23 Section 152), is amended to read as follows:

24 Section 152. As used in The Governmental Tort Claims Act:

1. "Action" means a proceeding in a court of competent
jurisdiction by which one party brings a suit against another;

1 2. "Agency" means any board, commission, committee, department
2 or other instrumentality or entity designated to act in behalf of
3 the state or a political subdivision;

4 3. "Charitable health care provider" means a person who is
5 licensed, certified, or otherwise authorized by the laws of this
6 state to administer health care in the ordinary course of business
7 or the practice of a profession and who provides care to a medically
8 indigent person, as defined in paragraph 8 of this section, with no
9 expectation of or acceptance of compensation of any kind;

10 4. "Claim" means any written demand presented by a claimant or
11 the claimant's authorized representative in accordance with this act
12 to recover money from the state or political subdivision as
13 compensation for an act or omission of a political subdivision or
14 the state or an employee;

15 5. "Claimant" means the person or the person's authorized
16 representative who files notice of a claim in accordance with The
17 Governmental Tort Claims Act. Only the following persons and no
18 others may be claimants:

19 a. any person holding an interest in real or personal
20 property which suffers a loss, provided that the claim
21 of the person shall be aggregated with claims of all
22 other persons holding an interest in the property and
23 the claims of all other persons which are derivative
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1 of the loss, and that multiple claimants shall be
2 considered a single claimant,

- 3 b. the individual actually involved in the accident or
4 occurrence who suffers a loss, provided that the
5 individual shall aggregate in the claim the losses of
6 all other persons which are derivative of the loss, or
7 c. in the case of death, an administrator, special
8 administrator or a personal representative who shall
9 aggregate in the claim all losses of all persons which
10 are derivative of the death;

11 6. "Employee" means any person who is authorized to act in
12 behalf of a political subdivision or the state whether that person
13 is acting on a permanent or temporary basis, with or without being
14 compensated or on a full-time or part-time basis.

15 a. Employee also includes:

- 16 (1) all elected or appointed officers, members of
17 governing bodies and other persons designated to
18 act for an agency or political subdivision, but
19 the term does not mean a person or other legal
20 entity while acting in the capacity of an
21 independent contractor or an employee of an
22 independent contractor,
23 (2) from September 1, 1991, through June 30, 1996,
24 licensed physicians, licensed osteopathic

1 physicians and certified nurse-midwives providing
2 prenatal, delivery or infant care services to
3 State Department of Health clients pursuant to a
4 contract entered into with the State Department
5 of Health in accordance with paragraph 3 of
6 subsection B of Section 1-106 of Title 63 of the
7 Oklahoma Statutes but only insofar as services
8 authorized by and in conformity with the terms of
9 the contract and the requirements of Section 1-
10 233 of Title 63 of the Oklahoma Statutes, and

11 (3) any volunteer, full-time or part-time firefighter
12 when performing duties for a fire department
13 provided for in subparagraph j of paragraph 8 of
14 this section.

15 b. For the purpose of The Governmental Tort Claims Act,
16 the following are employees of this state, regardless
17 of the place in this state where duties as employees
18 are performed:

19 (1) physicians acting in an administrative capacity,

20 (2) resident physicians and resident interns
21 participating in a graduate medical education
22 program of the University of Oklahoma Health
23 Sciences Center, the College of Osteopathic
24 Medicine of Oklahoma State University, or the

1 Department of Mental Health and Substance Abuse
2 Services,

3 (3) faculty members and staff of the University of
4 Oklahoma Health Sciences Center and the College
5 of Osteopathic Medicine of Oklahoma State
6 University, while engaged in teaching duties,

7 (4) physicians who practice medicine or act in an
8 administrative capacity as an employee of an
9 agency of the State of Oklahoma,

10 (5) physicians who provide medical care to inmates
11 pursuant to a contract with the Department of
12 Corrections,

13 (6) licensed medical professionals under contract
14 with city, county, or state entities who provide
15 medical care to inmates or detainees in the
16 custody or control of law enforcement agencies,
17 and

18 (7) licensed mental health professionals as defined
19 in Sections 1-103 and 5-502 of Title 43A of the
20 Oklahoma Statutes, who are conducting initial
21 examinations of individuals for the purpose of
22 determining whether an individual meets the
23 criteria for emergency detention as part of a
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1 contract with the Department of Mental Health and
2 Substance Abuse Services.

3 Physician faculty members and staff of the University
4 of Oklahoma Health Sciences Center and the College of
5 Osteopathic Medicine of Oklahoma State University not
6 acting in an administrative capacity or engaged in
7 teaching duties are not employees or agents of the
8 state.

9 c. Except as provided in subparagraph b of this
10 paragraph, in no event shall the state be held liable
11 for the tortious conduct of any physician, resident
12 physician or intern while practicing medicine or
13 providing medical treatment to patients;

14 7. "Loss" means death or injury to the body or rights of a
15 person or damage to real or personal property or rights therein;

16 8. "Medically indigent" means a person requiring medically
17 necessary hospital or other health care services for the person or
18 the dependents of the person who has no public or private third-
19 party coverage, and whose personal resources are insufficient to
20 provide for needed health care;

21 9. "Municipality" means any incorporated city or town, and all
22 institutions, agencies or instrumentalities of a municipality;

23 10. "Political subdivision" means:

24 a. a municipality,

- 1 b. a school district,
- 2 c. a county,
- 3 d. a public trust where the sole beneficiary or
- 4 beneficiaries are a city, town, school district or
- 5 county. For purposes of The Governmental Tort Claims
- 6 Act, a public trust shall include a municipal hospital
- 7 created pursuant to Section 30-101 et seq. of Title 11
- 8 of the Oklahoma Statutes, a county hospital created
- 9 pursuant to Section 781 et seq. of Title 19 of the
- 10 Oklahoma Statutes, or is created pursuant to a joint
- 11 agreement between such governing authorities, that is
- 12 operated for the public benefit by a public trust
- 13 created pursuant to Section 176 et seq. of Title 60 of
- 14 the Oklahoma Statutes and managed by a governing board
- 15 appointed or elected by the municipality, county, or
- 16 both, who exercises control of the hospital, subject
- 17 to the approval of the governing body of the
- 18 municipality, county, or both,
- 19 e. for the purposes of The Governmental Tort Claims Act
- 20 only, a housing authority created pursuant to the
- 21 provisions of the Oklahoma Housing Authority Act,
- 22 f. for the purposes of The Governmental Tort Claims Act
- 23 only, corporations organized not for profit pursuant
- 24 to the provisions of the Oklahoma General Corporation

1 Act for the primary purpose of developing and
2 providing rural water supply and sewage disposal
3 facilities to serve rural residents,

4 g. for the purposes of The Governmental Tort Claims Act
5 only, districts formed pursuant to the Rural Water,
6 Sewer, Gas and Solid Waste Management Districts Act,

7 h. for the purposes of The Governmental Tort Claims Act
8 only, master conservancy districts formed pursuant to
9 the Conservancy Act of Oklahoma,

10 i. for the purposes of The Governmental Tort Claims Act
11 only, a fire protection district created pursuant to
12 the provisions of Section 901.1 et seq. of Title 19 of
13 the Oklahoma Statutes,

14 j. for the purposes of The Governmental Tort Claims Act
15 only, a benevolent or charitable corporate volunteer
16 or full-time fire department for an unincorporated
17 area created pursuant to the provisions of Section 592
18 et seq. of Title 18 of the Oklahoma Statutes,

19 k. for purposes of The Governmental Tort Claims Act only,
20 an Emergency Services Provider rendering services
21 within the boundaries of a Supplemental Emergency
22 Services District pursuant to an existing contract
23 between the Emergency Services Provider and the
24 Oklahoma State Department of Health. Provided,

1 however, that the acquisition of commercial liability
2 insurance covering the activities of such Emergency
3 Services Provider performed within the State of
4 Oklahoma shall not operate as a waiver of any of the
5 limitations, immunities or defenses provided for
6 political subdivisions pursuant to the terms of The
7 Governmental Tort Claims Act,

8 l. for purposes of The Governmental Tort Claims Act only,
9 a conservation district created pursuant to the
10 provisions of the Conservation District Act,

11 m. for purposes of The Governmental Tort Claims Act,
12 districts formed pursuant to the Oklahoma Irrigation
13 District Act,

14 n. for purposes of The Governmental Tort Claims Act only,
15 any community action agency established pursuant to
16 Sections 5035 through 5040 of Title 74 of the Oklahoma
17 Statutes,

18 o. for purposes of The Governmental Tort Claims Act only,
19 any organization that is designated as a youth
20 services agency, pursuant to Section 7302-3.6a of
21 Title 10 of the Oklahoma Statutes,

22 p. for purposes of The Governmental Tort Claims Act only,
23 any judge presiding over a drug court, as defined by
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1 Section 471.1 of Title 22 of the Oklahoma Statutes,
2 and

3 q. for purposes of The Governmental Tort Claims Act only,
4 any child-placing agency licensed by this state to
5 place children in foster family homes, and

6 r. for purposes of The Governmental Tort Claims Act only,
7 corporations and officers and employees of
8 corporations, for all acts and omissions in
9 performance of a contract with the Department of
10 Corrections to house Oklahoma inmates. Provided,
11 however, that the acquisition of commercial liability
12 insurance covering the activities of the private
13 prison operators performed within the state shall not
14 operate as a waiver of any of the limitations,
15 immunities or defenses provided for political
16 subdivisions pursuant to the terms of The Governmental
17 Tort Claims Act,

18 and all their institutions, instrumentalities or agencies;

19 11. "Scope of employment" means performance by an employee
20 acting in good faith within the duties of the employee's office or
21 employment or of tasks lawfully assigned by a competent authority
22 including the operation or use of an agency vehicle or equipment
23 with actual or implied consent of the supervisor of the employee,
24 but shall not include corruption or fraud;

1 12. "State" means the State of Oklahoma or any office,
2 department, agency, authority, commission, board, institution,
3 hospital, college, university, public trust created pursuant to
4 Title 60 of the Oklahoma Statutes of which the State of Oklahoma is
5 the beneficiary, or other instrumentality thereof; and

6 13. "Tort" means a legal wrong, independent of contract,
7 involving violation of a duty imposed by general law or otherwise,
8 resulting in a loss to any person, association or corporation as the
9 proximate result of an act or omission of a political subdivision or
10 the state or an employee acting within the scope of employment.

11 SECTION 2. AMENDATORY 57 O.S. 2001, Section 37, as
12 amended by Section 3, Chapter 239, O.S.L. 2004 (57 O.S. Supp. 2007,
13 Section 37), is amended to read as follows:

14 Section 37. A. If all correctional facilities reach maximum
15 capacity and the Department of Corrections is required to contract
16 for bed space to house state inmates, then the Pardon and Parole
17 Board shall consider all nonviolent offenders for parole who are
18 within six (6) months of their scheduled release from a penal
19 facility.

20 B. No inmate may be received by a penal facility from a county
21 jail without first scheduling a transfer with the Department. The
22 sheriff or court clerk shall transmit by facsimile, electronic mail,
23 or actual delivery a certified copy of the judgment and sentence
24 certifying that the inmate is sentenced to the Department of

1 Corrections. The receipt of the certified copy of the judgment and
2 sentence shall be certification that the sentencing court has
3 entered a judgment and sentence and all other necessary commitment
4 documents. The Department of Corrections is authorized to determine
5 the appropriate method of delivery from each county based on
6 electronic or other capabilities. Once the judgment and sentence is
7 received by the Department of Corrections, the Department shall
8 contact the sheriff when bed space is available to schedule the
9 transfer and reception of the inmate into the Department. Except as
10 provided in subsection C of this section, the Department of
11 Corrections shall have sole discretion concerning the scheduling of
12 receptions.

13 C. When a county jail has reached its capacity of inmates as
14 defined in Section 192 of Title 74 of the Oklahoma Statutes, then
15 the county sheriff shall notify the Director of the Oklahoma
16 Department of Corrections, or the Director's designated
17 representative, by facsimile, electronic mail, or actual delivery,
18 that the county jail has reached or exceeded its capacity to hold
19 inmates. The notification shall include copies of any judgment and
20 sentences not previously delivered as required by subsection B of
21 this section. Then within seventy-two (72) hours following such
22 notification, the county sheriff shall transport the designated
23 excess inmate or inmates to a penal facility designated by the
24 Department. The sheriff shall notify the Department of the

1 transport of the inmate prior to the reception of the inmate. The
2 Department shall schedule the reception date and receive the inmate
3 within seventy-two (72) hours of notification that the county jail
4 is at capacity, unless other arrangements can be made with the
5 sheriff.

6 D. Once the judgment and sentence is transmitted to the
7 Department of Corrections, the Department will be responsible for
8 the cost of housing the inmate in the county jail from the date the
9 Department receives the transmittal until the date of transfer of
10 the inmate from the county jail. The cost of housing shall be the
11 per diem rate specified in Section 38 of this title. In the event
12 the inmate has other criminal charges pending in another Oklahoma
13 jurisdiction the Department shall be responsible for the housing
14 costs while the inmate remains in the county jail awaiting transfer
15 to another jurisdiction. Once the inmate is transferred to another
16 jurisdiction, the Department is not responsible for the housing cost
17 of the inmate until such time that another judgment and sentence is
18 received from another Oklahoma jurisdiction. The sheriff shall be
19 reimbursed by the Department for the cost of housing the inmate in
20 one of two ways:

21 1. The sheriff is authorized to submit invoices for the cost of
22 housing the inmate on a monthly basis; or

23 2. The sheriff may submit one invoice for the total amount due
24 for the inmate after the Department has received the inmate.

1 SECTION 3. AMENDATORY 57 O.S. 2001, Section 58.3, is
2 amended to read as follows:

3 Section 58.3 Prisoners employed as provided herein shall be
4 given a credit of two (2) days on a jail sentence for each day
5 worked, and a credit of ~~Twenty-five Dollars (\$25.00)~~ Fifty Dollars
6 (\$50.00) per day upon the payment of a fine or court cost, if
7 sentenced for nonpayment of a fine or court cost. The sheriff shall
8 be authorized to order the credit be given to the prisoner on the
9 records of the court where the conviction of the prisoner is filed.

10 SECTION 4. This act shall become effective November 1, 2008.

11 Passed the House of Representatives the 13th day of March, 2008.

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Presiding Officer of the House of
Representatives

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16 Passed the Senate the ____ day of _____, 2008.

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Presiding Officer of the Senate

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