ENGROSSED SENATE
BILL NO. 678 By: Corn of the Senate

and

Billy of the House

[criminal procedure - membership of the Oklahoma Sentencing Commission - effective date - emergency]

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

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

Section 1502. A. The Oklahoma Sentencing Commission shall consist of ~~fifteen (15)~~ sixteen (16) members as follows:

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

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

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

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

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

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

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

8. The Director of State Finance or the director of the budget division of the Office of State Finance;

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

10. A judge of the district court appointed by the assembly of presiding judges, who shall serve an initial term of three (3) years; provided, any person appointed pursuant to this paragraph who

is no longer serving as a district judge shall not continue to serve on the Commission;

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

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

13. The director of the Oklahoma State Bureau of Investigation or the deputy director of the Oklahoma State Bureau of Investigation; and

14. The Director of the Department of Corrections, or the Associate Director of the Department of Corrections as designee.

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

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

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

B. 1. In lieu of the provisions of subsection A of this section, Department of Public Safety vehicles used regularly as patrol units shall be distinctively painted black and white and

shall bear the wording "Oklahoma Highway Patrol" on each side of the vehicle in letters of such size as to be easily distinguishable, it being the purpose and intention of the Legislature that said patrol units shall be marked in the future in the same manner as those now in use.

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

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

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

SECTION 3. AMENDATORY 57 O.S. 2001, Section 510, as last amended by Section 5, Chapter 294, O.S.L. 2006 (57 O.S. Supp. 2006, 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,

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,

c. be of good moral character,

d. 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,

e. 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

f. 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, the punishment of recalcitrant prisoners, 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; and

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

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 4. AMENDATORY 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), 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, an entity contracting with the Department of Corrections to provide correctional services, 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, 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~~ title:

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 presently or formerly 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 probation or parole; and

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

C. If the court determines 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 5. REPEALER 57 O.S. 2001, Section 567, is hereby repealed.

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

SECTION 7. 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.

Passed the Senate the 13th day of March, 2007.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2007.

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Presiding Officer of the House
of Representatives