

THE HOUSE OF REPRESENTATIVES
Wednesday, February 27, 2008

Committee Substitute for
House Bill No. 3336

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 3336 - By: THOMPSON of the House.

(County jails - jail costs - jail booking fee - contraband in jails or penal institutions - capacity rates of correctional facilities - reimbursement to health care providers - testing of county jail inmates – codification - effective date – emergency)

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

1 SECTION 1. AMENDATORY 22 O.S. 2001, Section 979a, as last amended by
2 Section 2, Chapter 470, O.S.L. 2005 (22 O.S. Supp. 2007, Section 979a), is amended to
3 read as follows:

4 Section 979a. A. The court shall require a person who is actually received into
5 custody at a jail facility or who is confined in a city or county jail or holding facility, for
6 any offense, to pay the jail facility or holding facility the costs of incarceration, both
7 before and after conviction, upon conviction or receiving a deferred sentence. The costs of
8 incarceration shall be collected by the clerk of the court as provided for collection of other
9 costs and fines, which shall be subject to review under the procedures set forth in Section
10 VIII of the Rules of the Oklahoma Court of Criminal Appeals, Chapter 18, Appendix of
11 ~~Title 22 of the Oklahoma Statutes~~ this title. Costs of incarceration shall include booking,

1 receiving and processing out, housing, food, clothing, medical care, dental care, and
2 psychiatric services. The costs for incarceration shall be an amount equal to the actual
3 cost of the services and shall be determined by the chief of police for city jails and holding
4 facilities, by the county sheriff for county jails or by contract amount, if applicable. In
5 the event a person requires emergency medical treatment for an injury or condition that
6 threatens life or threatens the loss or use of a limb prior to being actually received into
7 the custody of any jail facility, the provisions of Section 533 of Title 21 of the Oklahoma
8 Statutes shall apply to taking custody, medical care and cost responsibility. The cost of
9 incarceration shall be paid by the court clerk, when collected, to the municipality, holding
10 facility, county or other public entity responsible for the operation of such facility where
11 the person was held at any time. Except for medical costs, ten percent (10%) of any
12 amount collected by the court clerk shall be paid to the municipal attorney's or district
13 attorney's office, and the remaining amount shall be paid to the municipality, the
14 sheriff's service fee account or, if the sheriff does not operate the jail facility, the
15 remaining amount shall be deposited with the public entity responsible for the operation
16 of the jail facility where the person was held at any time. The court shall order the
17 defendant to reimburse all actual costs of incarceration, upon conviction or upon entry of
18 a deferred judgment and sentence unless the defendant is a mentally ill person as
19 defined by Section 1-103 of Title 43A of the Oklahoma Statutes. The sheriff shall give
20 notice to the defendant of the actual costs owed before any court-ordered costs are
21 collected. The defendant shall have an opportunity to object to the amount of costs solely
22 on the grounds that the number of days served is incorrect. If no objection is made, the

1 costs may be collected in the amount stated in the notice to the defendant. The sheriff,
2 municipality or other public entity responsible for the operation of the jail may collect
3 costs of incarceration ordered by the court from the jail account of the inmate. If the
4 funds collected from the jail account of the inmate are insufficient to satisfy the actual
5 incarceration costs ordered by the court, the sheriff, municipality or other public entity
6 responsible for the operation of the jail is authorized to collect the remaining balance of
7 the incarceration costs by civil action. When the sheriff, municipality or other public
8 entity responsible for the operation of the jail collects any court-ordered incarceration
9 costs from the jail account of the inmate or by criminal or civil action, the court clerk
10 shall be notified of the amount collected.

11 B. Except as may otherwise be provided in Section 533 of Title 21 of the Oklahoma
12 Statutes, any offender receiving routine or emergency medical services or medications or
13 injured during the commission of a felony or misdemeanor offense and administered any
14 medical care shall be required to reimburse the sheriff, municipality or other public
15 entity responsible for the operation of the jail, the full amount paid by the sheriff,
16 municipality or other public entity responsible for the operation of the jail for any
17 medical care or treatment administered to such offender during any period of
18 incarceration or when the person was actually received into custody for any reason in
19 that jail facility. The sheriff, municipality or other public entity responsible for the
20 operation of the jail may deduct the costs of medical care and treatment as authorized by
21 Section 531 of Title 19 of the Oklahoma Statutes. If the funds collected from the jail
22 account of the inmate are insufficient to satisfy the actual medical costs paid, the sheriff,

1 municipality or other public entity responsible for the operation of the jail shall be
2 authorized to collect the remaining balance of the medical care and treatment by civil
3 actions.

4 C. Costs of incarceration shall be a debt of the inmate owed to the municipality,
5 county, or other public entity responsible for the operation of the jail and may be
6 collected as provided by law for collection of any other civil debt or criminal penalty.

7 D. The court shall not waive the costs of incarceration in their entirety. However, if
8 the court determines that a reduction in the fine, costs, and costs of incarceration is
9 warranted, the court shall equally apply the same percentage reduction to the fine, costs,
10 and costs of incarceration owed by the defendant.

11 SECTION 2. AMENDATORY 22 O.S. 2001, Section 988.12, as amended by
12 Section 4, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2007, Section 988.12), is amended to
13 read as follows:

14 Section 988.12 A. Any person sentenced to a community punishment pursuant to
15 the provisions of the Oklahoma Community Sentencing Act shall not be deemed an
16 inmate, nor shall the person be considered to be in the custody of the Department of
17 Corrections, nor shall the person require processing through the Lexington Reception
18 and Assessment Center. Persons sentenced to community punishment pursuant to the
19 Oklahoma Community Sentencing Act shall be in community custody within the county.

20 B. Except as otherwise specifically provided by law, persons sentenced to a
21 community punishment which does not include incarceration shall not have medical or

1 dental expenses paid by the Department of Corrections or reimbursed by the Community
2 Sentencing Division.

3 ~~C. In jurisdictions where the local community sentencing system is receiving state
4 funds, the state will pay all required medical expenses while a person is incarcerated in
5 the county jail pursuant to a disciplinary sanction for a community punishment, provided
6 the state has the obligation to pay for the term of incarceration pursuant to the
7 provisions of the Oklahoma Community Sentencing Act. Any community sentenced
8 offender confined pursuant to a disciplinary sanction who requires extensive medical
9 treatment may be transferred to the Department of Corrections for appropriate medical
10 treatment upon order of the court. The community sentenced offender shall be returned
11 to the local system following the necessary medical treatment or upon completion of the
12 term of the disciplinary sanction whichever occurs first.~~

13 SECTION 3. AMENDATORY 22 O.S. 2001, Section 991a-2, is amended to read
14 as follows:

15 Section 991a-2. A. Any person who has been convicted of a nonviolent felony
16 offense in this state may be sentenced, at the discretion of the judge, to incarceration in
17 the county jail for a period of one or more nights or weekends with the remaining portion
18 of each week being spent under supervision. County jail imprisonment pursuant to the
19 provisions of this section for felony offenders shall be:

- 20 1. Prescribed by law for the particular felony; or
- 21 2. A condition of a suspended sentence.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 B. In addition to incarceration, the court may impose any fine, cost assessment, or
2 other punishment provision allowed by law; provided, however, the punishment when
3 taken in its entirety with the jail term shall not impose a greater punishment than
4 allowed by law for the offense.

5 C. Any person incarcerated in the county jail pursuant to the provisions of this
6 section may be assigned work duties as ordered or approved by the judge. The
7 sentencing court may require a person incarcerated pursuant to the provisions of this
8 section to pay the county, for food and maintenance for each day of incarceration, an
9 amount equal to the maximum amount prescribed by law to be paid by the county to the
10 sheriff for such expenses. If the judge does not so order, the Department of Corrections
11 shall reimburse the county for the cost of feeding and care of the person during such
12 periods of incarceration.

13 ~~D. The Department of Corrections shall reimburse the county for the actual cost~~
14 ~~paid for any emergency medical care for physical injury or illness of a person~~
15 ~~incarcerated hereunder; provided the injury or illness is directly related to the~~
16 ~~incarceration and the county is required by law to provide such care for inmates in the~~
17 ~~jail.~~

18 E. Any person incarcerated pursuant to the provisions of this section shall not be
19 considered to be in the custody of the Department of Corrections or an inmate of the
20 Department. The person shall be deemed to be in the custody of the county.

1 ~~F. E.~~ When the court sentences a person to incarceration pursuant to the provisions
2 of this section in conjunction with a suspended sentence, the court shall have the
3 authority to revoke any unserved portion of the suspended sentence as provided by law.

4 ~~G. F.~~ For the purposes of subsection A of this section, weekend incarceration shall
5 commence at 6 p.m. on Friday and continue until 8 a.m. on the following Monday, and
6 incarceration overnight shall commence at 6 p.m. on one day and continue until 8 a.m. of
7 the next day. Provided, that the sentencing judge may modify the incarceration times if
8 the circumstances of the particular case require such action. Persons who have been
9 sentenced to incarceration in the county jail under the provisions of this section will not
10 have to be processed through the Lexington Assessment and Reception Center prior to
11 incarceration.

12 SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma
13 Statutes as Section 153.4 of Title 28, unless there is created a duplication in numbering,
14 reads as follows:

15 In any criminal case in which a defendant is admitted into a jail facility and is
16 subsequently convicted for a violation of state law, the sheriff or jail trust authority
17 responsible for operating the jail facility in the county in which the conviction was
18 obtained shall be authorized to recover a jail booking fee of Eighteen Dollars (\$18.00).
19 The jail booking fee shall be used to defer any costs associated with processing the
20 defendant into the jail facility. The jail booking fee shall not be waived by the court. The
21 court clerk shall collect the fee amount and may retain five percent (5%) of such monies
22 to be deposited in the Court Clerk Revolving Fund to cover administrative costs and shall

1 remit the remainder to the Sheriff's Service Fee Account of the sheriff or general fund of
2 the jail trust authority of the county in which the conviction was obtained.

3 SECTION 5. AMENDATORY 57 O.S. 2001, Section 21, is amended to read as
4 follows:

5 Section 21. A. Any person who, without authority, brings into or has in his or her
6 possession in any jail or state penal institution or other place where prisoners are
7 located, any gun, knife, bomb or other dangerous instrument, any controlled dangerous
8 substance as defined by Section 2-101 et seq. of Title 63 of the Oklahoma Statutes, any
9 intoxicating beverage or low-point beer as defined by Sections 163.1 and 163.2 of Title 37
10 of the Oklahoma Statutes, money, or financial documents for a person other than the
11 inmate or a spouse of the inmate, including, but not limited to tax returns, shall be guilty
12 of a felony and is subject to imprisonment in the ~~State Penitentiary~~ custody of the
13 Department of Corrections for not less than one (1) year or more than five (5) years, or a
14 fine of not less than One Hundred Dollars (\$100.00) or more than One Thousand Dollars
15 (\$1,000.00), or both such fine and imprisonment.

16 B. If an inmate is found to be in possession of any such item, upon conviction, such
17 inmate shall be guilty of a felony and shall be subject to imprisonment for not less than
18 five (5) years nor more than twenty (20) years in the ~~State Penitentiary~~ custody of the
19 Department of Corrections.

20 C. If the person found to be in possession of any such item has, prior to the
21 commission of said offense, committed two or more felony offenses, and said possession of
22 contraband was within ten (10) years of the completion of the execution of the sentence,

1 such person, upon conviction, shall be guilty of a felony and shall be punished by
2 imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a
3 term of not less than twenty (20) years. Felony offenses relied upon shall not have arisen
4 out of the same transaction or occurrence or series of events closely related in time and
5 location.

6 D. Any person who, without authority, brings into or has in his or her possession in
7 any jail or state penal institution or other place where prisoners are located, cigarettes,
8 cigars, snuff, chewing tobacco, or any other form of tobacco product, or any cellular phone
9 or electronic device capable of sending or receiving digital transmissions shall, upon
10 conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail not
11 to exceed one (1) year, or a fine not to exceed Five Hundred Dollars (\$500.00), or by both
12 such fine and imprisonment.

13 SECTION 6. AMENDATORY Section 1, Chapter 231, O.S.L. 2002 (57 O.S.
14 Supp. 2007, Section 22), is amended to read as follows:

15 Section 22. A. Except as otherwise provided in this section, any detention officer,
16 deputy sheriff, or other person employed as jail operations staff by a county, city, or other
17 entity that operates a jail who receives compensation from any person other than the
18 sheriff or jail administrator for providing goods, tobacco products, or services for the
19 benefit of an inmate, upon conviction, shall be guilty of a misdemeanor if the
20 compensation is an amount of less than Five Hundred Dollars (\$500.00), punishable by
21 up to six (6) months in the county jail, or a fine of not more than One Thousand Dollars
22 (\$1,000.00), or by both such fine and imprisonment and shall be guilty of a felony if the

1 compensation is an amount of Five Hundred Dollars (\$500.00) or more, punishable by
2 imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for not
3 more than two (2) years, or a fine of not more than Five Thousand Dollars (\$5,000.00), or
4 by both such fine and imprisonment.

5 B. The provisions of this section shall not apply to any person operating, or
6 employed by, a vendor facility licensed by the State Department of Rehabilitation
7 Services pursuant to Sections 71 through 78 of Title 7 of the Oklahoma Statutes for
8 purposes of carrying out the provisions of the Randolph-Sheppard Act, 20 U.S.C.A.,
9 Section 107 et seq., or any other duly authorized vendor.

10 SECTION 7. AMENDATORY 57 O.S. 2001, Section 37, as amended by Section
11 3, Chapter 239, O.S.L. 2004 (57 O.S. Supp. 2007, Section 37), is amended to read as
12 follows:

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

17 B. No inmate may be received by a penal facility from a county jail without first
18 scheduling a transfer with the Department. The sheriff or court clerk shall transmit by
19 facsimile, electronic mail, or actual delivery a certified copy of the judgment and sentence
20 certifying that the inmate is sentenced to the Department of Corrections. The receipt of
21 the certified copy of the judgment and sentence shall be certification that the sentencing
22 court has entered a judgment and sentence and all other necessary commitment

1 documents. The Department of Corrections is authorized to determine the appropriate
2 method of delivery from each county based on electronic or other capabilities. Once the
3 judgment and sentence is received by the Department of Corrections, the Department
4 shall contact the sheriff when bed space is available to schedule the transfer and
5 reception of the inmate into the Department.

6 C. When a county jail has reached its capacity of inmates as defined in Section 192
7 of Title 74 of the Oklahoma Statutes, then the county sheriff shall notify the Director of
8 the Oklahoma Department of Corrections, or the Director's designated representative, by
9 facsimile, electronic mail, or actual delivery, that the county jail has reached or exceeded
10 its capacity to hold inmates. The notification shall include copies of any judgment and
11 sentences not previously delivered as required by subsection B of this section. Then
12 within seventy-two (72) hours following such notification, the county sheriff shall
13 transport the designated excess inmate or inmates to a penal facility designated by the
14 Department. The sheriff shall notify the Department of the transport of the inmate prior
15 to the reception of the inmate. The Department shall schedule the reception date and
16 receive the inmate within seventy-two (72) hours of notification that the county jail is at
17 capacity, unless other arrangements can be made with the sheriff.

18 D. Once the judgment and sentence is transmitted to the Department of
19 Corrections, the Department will be responsible for the cost of housing the inmate in the
20 county jail from the date the ~~Department receives the transmittal~~ sentence was ordered
21 by the court until the date of transfer of the inmate from the county jail. The cost of
22 housing shall be the per diem rate specified in Section 38 of this title. In the event the

1 inmate has other criminal charges pending in another Oklahoma jurisdiction the
2 Department shall be responsible for the housing costs while the inmate remains in the
3 county jail awaiting transfer to another jurisdiction. Once the inmate is transferred to
4 another jurisdiction, the Department is not responsible for the housing cost of the inmate
5 until such time that another judgment and sentence is received from another Oklahoma
6 jurisdiction. The sheriff shall be reimbursed by the Department for the cost of housing
7 the inmate in one of two ways:

8 1. The sheriff ~~is authorized to~~ may submit invoices for the cost of housing the
9 inmate on a monthly basis; or

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

12 SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma
13 Statutes as Section 38.3 of Title 57, unless there is created a duplication in numbering,
14 reads as follows:

15 A. As used in this section:

16 1. “Emergency care” means the medical or surgical care necessary to treat the
17 sudden onset of a potentially life- or limb-threatening condition or symptom;

18 2. “Dental emergency” means acute problems in the mouth exhibiting symptoms of
19 pain, swelling, bleeding or elevation of temperature; and

20 3. “Mental health emergency” means a person exhibiting behavior due to mental
21 illness that may be an immediate threat to others or himself or herself that renders the
22 person incapable of caring for himself or herself.

1 B. The Department of Corrections shall reimburse health care providers for
2 medical care and treatment for inmates retained in county jails after a certified copy of a
3 judgment and sentence has been entered pursuant to the provisions of Section 980 of
4 Title 22 of the Oklahoma Statutes or pursuant to the provisions of Section 988.12 or
5 991a-2 of Title 22 of the Oklahoma Statutes. Health care providers that are in the
6 network established by the Department of Corrections in conjunction with the State and
7 Education Employees Group Insurance Board shall be reimbursed according to the fee
8 schedule established for that network; provided, that reimbursement will be no less than
9 the fee structure that was in effect January 1, 2007, or the current fee schedule,
10 whichever is greater. Health care providers that are out of network shall be reimbursed
11 according to the Oklahoma Medicaid Fee Schedule; provided, that reimbursement shall
12 be no less than the fee structure that was in effect January 1, 2007, or the current fee
13 schedule, whichever is greater. Prior to obtaining nonemergency care outside the county
14 jail facility, authorization must be received from the Department of Corrections. For any
15 emergency care, dental emergency or mental health emergency care obtained outside the
16 county jail facility, the Department of Corrections must be notified within twenty-four
17 (24) hours. The Department of Corrections is hereby authorized to reject claims if proper
18 notification has not been provided.

19 C. The sheriff shall be responsible for providing and paying for medical, dental and
20 mental health care screening when an inmate is admitted, routine sick calls within the
21 county jail and access to on-site physician services as is routinely provided for all inmates

1 in the custody of the sheriff and as provided by Section 52 of Title 57 of the Oklahoma
2 Statutes.

3 D. The Department of Corrections shall pay the pharmacy provider for medications
4 provided to inmates retained in county jails after a certified copy of a judgment and
5 sentence has been entered pursuant to the provisions of Section 980 of Title 22 of the
6 Oklahoma Statutes or pursuant to the provisions of Section 988.12 or 991a-2 of Title 22
7 of the Oklahoma Statutes. If the pharmacy provider is a Medicaid provider, the
8 pharmacy provider must bill the Department at Medicaid rates. The county jail shall be
9 responsible for paying for any medications that are not listed on the Department of
10 Corrections formulary, unless the county jail receives a written exception from the
11 Department.

12 E. Dental and mental health care shall be provided through the designated host
13 facility of the Department of Corrections for inmates retained in county jails after a
14 certified copy of a judgment and sentence has been entered pursuant to the provisions of
15 Section 980 of Title 22 of the Oklahoma Statutes or pursuant to the provisions of Section
16 988.12 or 991a-2 of Title 22 of the Oklahoma Statutes. Each county jail is encouraged to
17 work with local community mental health centers to provide necessary medications and
18 emergency services that would be reimbursed pursuant to the provisions of this
19 subsection.

20 F. The sheriff shall be responsible for transportation and security of inmates to all
21 outside health care appointments including host facilities of the Department of
22 Corrections.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 G. Neither the Department of Corrections nor the sheriff shall be responsible for
2 the cost of health care while an inmate is on escape status or for any injury incurred
3 while on escape status.

4 H. The Department of Corrections shall not be responsible for payment of health
5 care of inmates housed in the county jail under the following circumstances:

6 1. Prior to entry of a certified judgment and sentence pursuant to the provisions of
7 Section 980 of Title 22 of the Oklahoma Statutes;

8 2. When an inmate is detained in the county jail pursuant to a writ of habeas
9 corpus;

10 3. When an inmate is detained in the county jail for additional cases pending after
11 a certified copy of the judgment and sentence has been entered;

12 4. When an inmate is detained in the county jail and his or her status is on hold for
13 another jurisdiction; or

14 5. When an inmate is detained in the county jail and the inmate is sentenced to
15 county jail time only.

16 SECTION 9. AMENDATORY 63 O.S. 2001, Section 1-523, is amended to read
17 as follows:

18 Section 1-523. A. 1. Any and all institutions in this state, whether penal or
19 eleemosynary, public or private, and free or for pay, shall make, and preserve for a period
20 of at least one (1) year, a record showing the name, age, sex, race, nationality and place
21 of residence of any infected inmate of such institution who may come to their knowledge.

1 2. The institution shall make available such record at all reasonable hours for
2 inspection by the State Commissioner of Health or the local health officer.

3 3. Such institutions shall further furnish a physician and all proper medicines,
4 instruments and apparatus for the proper treatment of such infected inmate.

5 B. Each institution and each Department of Corrections district office, and each
6 county or municipal jail shall notify their correctional officers, probation and parole
7 officers, and any jailor, or other employee or any employee of the Pardon and Parole
8 Board, who has or will have direct contact with an inmate, when such inmate is infected
9 with the human immunodeficiency virus (HIV) or has the Acquired Immune Deficiency
10 Syndrome (AIDS) disease.

11 C. 1. If an officer or employee of the State of Oklahoma, or any other person comes
12 into contact with the bodily fluids of an inmate in a state correctional facility, the
13 Director of the Department of Corrections or designee, under such rules as the Director
14 shall promulgate to carry out the provisions of this section, shall cause such inmate to be
15 tested for such disease, if no prior record of the existence of such disease exists. If an
16 officer or employee of a county jail, or any other person, comes into contact with the
17 bodily fluids of an inmate in a county jail, the sheriff or designee, under policies the
18 sheriff shall promulgate to carry out the provisions of this section, shall cause the inmate
19 to be tested for such disease, if no prior record of the existence of such disease exists.

20 2. The Director or designee shall promptly communicate in writing the results of
21 the test to the person so exposed and refer the employee to the Department of
22 Correction's Employee Assistance Program for appropriate referrals for counseling,

1 health care, and support services for the person so exposed. If the exposure occurs within
2 a county jail, the sheriff or designee shall promptly communicate in writing the results of
3 the test to the person so exposed and refer the employee to the employee assistance
4 program of the county for appropriate referrals for counseling, health care, and support
5 services for the person so exposed.

6 3. As used in this section, the term "serious transmissible disease" means the
7 Human Immunodeficiency Virus (HIV) and hepatitis.

8 SECTION 10. Section 7 of this act shall become effective July 1, 2008.

9 SECTION 11. It being immediately necessary for the preservation of the public
10 peace, health and safety, an emergency is hereby declared to exist, by reason whereof
11 this act shall take effect and be in full force from and after its passage and approval.

12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,
13 dated 02-26-08 - DO PASS, As Amended.