

SB 678

Senate Bill No. 678
As Amended

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

1 appointed by the Speaker of the House of Representatives, each of
2 whom shall serve an initial term of two (2) years;

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

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

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

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

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

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

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

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

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

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

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

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

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

20 B. 1. In lieu of the provisions of subsection A of this
21 section, Department of Public Safety vehicles used regularly as
22 patrol units shall be distinctively painted black and white and
23 shall bear the wording "Oklahoma Highway Patrol" on each side of the

1 vehicle in letters of such size as to be easily distinguishable, it
2 being the purpose and intention of the Legislature that said patrol
3 units shall be marked in the future in the same manner as those now
4 in use.

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

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

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

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

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

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

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

17 a. the minimum age for service shall be twenty-one (21)
18 years of age. The Director shall have the authority
19 to establish the maximum age for correctional officers
20 entering service,

21 b. possession of a minimum of thirty (30) semester hours
22 from an accredited college or university, or
23 possession of a high school diploma acquired from an

1 accredited high school or GED equivalent testing
2 program and graduation from a training course
3 conducted by or approved by the Department and
4 certified by the Council on Law Enforcement Education
5 and Training either prior to employment or during the
6 first six (6) months of employment,
7 c. be of good moral character,
8 d. before going on duty alone, satisfactory completion of
9 an adequate training program for correctional officers
10 and guards, as prescribed and approved by the State
11 Board of Corrections,
12 e. satisfactory completion of minimum testing or
13 professional evaluation through the Merit System of
14 Personnel Administration to determine the fitness of
15 the individual to serve in the position written
16 evaluations shall be submitted to the Department of
17 Corrections, and
18 f. satisfactory completion of a physical in keeping with
19 the conditions of the job description on an annual
20 basis and along the guidelines as established by the
21 Department of Corrections;

22 3. To designate as peace officers qualified personnel in any
23 Department of Corrections job classifications. The Director shall

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

19 4. To maintain such industries, factories, plants, shops,
20 farms, and other enterprises and operations, hereinafter referred to
21 as prison industries, at each institution as the State Board of
22 Corrections deems necessary or appropriate to employ the prisoners
23 or teach skills, or to sustain the institution; and as provided for

1 by policies established by the State Board of Corrections, to allow
2 compensation for the work of the prisoners, and to provide for
3 apportionment of inmate wages, the amounts thus allowed to be kept
4 in accounts by the Board for the prisoners and given to the inmates
5 upon discharge from the institution, or upon an order paid to their
6 families or dependents or used for the personal needs of the
7 prisoners. Any industry that employs prisoners shall be deemed a
8 "State Prison Industry" if the prisoners are paid from state funds
9 including the proceeds of goods sold as authorized by Section 123f
10 of Title 74 of the Oklahoma Statutes. Any industry in which wages
11 of prisoners are paid by a nongovernmental person, group, or
12 corporation, except those industries employing prisoners in work-
13 release centers under the authority of the Department of Corrections
14 shall be deemed a "Private Prison Industry";

15 5. To assign residences at each institution to institutional
16 personnel and their families;

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

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

20 8. To prescribe rules for the conduct, management, and
21 operation of each institution, including rules for the demeanor of
22 prisoners, the punishment of recalcitrant prisoners, the treatment
23 of incorrigible prisoners, and the disposal of property or

1 contraband seized from inmates or offenders under the supervision of
2 the Department;

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

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

6 The prisoner shall be returned to the institution when the
7 superintendent of the hospital certifies that the prisoner has been
8 restored to mental health;

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

15 12. To maintain courses of training and instruction for
16 employees at each institution;

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

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

21 15. To provide, subject to rules established by the State Board
22 of Corrections, for the utilization of inmate labor for any agency
23 of the state, city, town, or subdivision of this state, upon the

1 duly authorized request for such labor by the agency. The inmate
2 labor shall not be used to reduce employees or replace regular
3 maintenance or operations of the agency. The inmate labor shall be
4 used solely for public or state purposes. No inmate labor shall be
5 used for private use or purpose. Insofar as it is practicable, all
6 inmate labor shall be of such a nature and designed to assist and
7 aid in the rehabilitation of inmates performing the labor;

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

1 who are on probation or parole; and develop and operate, subject to
2 the policies and guidelines of the Board, work-release centers,
3 community treatment facilities or prerelease programs at appropriate
4 sites throughout this state;

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

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

19 19. To provide reintegration referral services to any person
20 discharged from the state custody who has volunteered to receive
21 reintegration referral services. The Director may assign staff to
22 refer persons discharged from state custody to services. The
23 Director shall promulgate rules for the referral process. All

1 reintegration referral services shall be subject to the availability
2 of funds; ~~and~~

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

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

1 Department shall promulgate rules establishing criteria for
2 accepting or using advertisements as authorized in this paragraph.

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

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

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

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

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

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

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

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

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

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

1 SECTION 5. REPEALER 57 O.S. 2001, Section 567, is hereby
2 repealed.

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

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

8 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-21-07 - DO
9 PASS, As Amended and Coauthored.