

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 704

By: Wilson

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5
6 AS INTRODUCED

7 An Act relating to corrections; creating the
8 Emergency Credit Activation Plan; providing short
9 title; amending 57 O.S. 2001, Section 571, as last
10 amended by Section 29, Chapter 3, O.S.L. 2008 (57
11 O.S. Supp. 2008, Section 571), which relates to
12 definition for nonviolent offense; adding
13 definitions; providing procedure to declare a prison
14 state of emergency; granting Governor certain period
15 to find emergency does not exist; providing emergency
16 time credits; setting credit limitations; directing
17 additional emergency time credits; setting time to
18 grant additional emergency time credits; setting
19 maximum number of credits allowable within certain
20 time period; providing certain assessment of conduct
21 by Pardon and Parole Board; authorizing Parole Board
22 to determine parole eligibility; denying certain
23 emergency time credits under certain circumstances;
24 providing procedure for rescission of state of
emergency; directing Governor to end state of
emergency under certain circumstances; authorizing
subsequent declaration of state of emergency;
construing effects of natural disaster on emergency
credits; providing for codification; and providing an
effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 570A of Title 57, unless there
24 is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Emergency
2 Credit Activation Plan" (CAP).

3 SECTION 2. AMENDATORY 57 O.S. 2001, Section 571, as last
4 amended by Section 29, Chapter 3, O.S.L. 2008 (57 O.S. Supp. 2008,
5 Section 571), is amended to read as follows:

6 Section 571. As used in the Emergency Credit Activation Plan
7 and the Oklahoma Statutes, unless another definition is specified:

8 1. "Capacity" means the actual available bedspace in state
9 owned prison facilities as certified by the State Board of
10 Corrections subject to applicable federal and state laws and the
11 rules and regulations promulgated under such laws;

12 2. "Department" means the Department of Corrections;

13 3. "Director" means the Director of the Department of
14 Corrections";

15 4. "Emergency time credit" means time reduction of sentence
16 allowed when ninety-five percent (95%) of capacity is exceeded
17 pursuant to this act; and

18 5. "Nonviolent offense" means any felony offense except the
19 following, or any attempts to commit or conspiracy or solicitation
20 to commit the following crimes:

21 a. assault, battery, or assault and battery with a
22 dangerous or deadly weapon;

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- 1 b. aggravated assault and battery on a police officer,
- 2 sheriff, highway patrolman, or any other officer of
- 3 the law;
- 4 c. poisoning with intent to kill;
- 5 d. shooting with intent to kill;
- 6 e. assault with intent to kill;
- 7 f. assault with intent to commit a felony;
- 8 g. assaults while masked or disguised;
- 9 h. murder in the first degree;
- 10 i. murder in the second degree;
- 11 j. manslaughter in the first degree;
- 12 k. manslaughter in the second degree;
- 13 l. kidnapping;
- 14 m. burglary in the first degree;
- 15 n. burglary with explosives;
- 16 o. kidnapping for extortion;
- 17 p. maiming;
- 18 q. robbery;
- 19 r. robbery in the first degree;
- 20 s. robbery in the second degree;
- 21 t. armed robbery;
- 22 u. robbery by two (2) or more persons;
- 23 v. robbery with dangerous weapon or imitation firearm;
- 24 w. child abuse;

- 1 x. wiring any equipment, vehicle or structure with
- 2 explosives;
- 3 y. forcible sodomy;
- 4 z. rape in the first degree;
- 5 aa. rape in the second degree;
- 6 bb. rape by instrumentation;
- 7 cc. lewd or indecent proposition or lewd or indecent act
- 8 with a child;
- 9 dd. use of a firearm or offensive weapon to commit or
- 10 attempt to commit a felony;
- 11 ee. pointing firearms;
- 12 ff. rioting;
- 13 gg. inciting to riot;
- 14 hh. arson in the first degree;
- 15 ii. injuring or burning public buildings;
- 16 jj. sabotage;
- 17 kk. criminal syndicalism;
- 18 ll. extortion;
- 19 mm. obtaining signature by extortion;
- 20 nn. seizure of a bus, discharging firearm or hurling
- 21 missile at bus;
- 22 oo. mistreatment of a mental patient; or

1 pp. using a vehicle to facilitate the discharge of a
2 weapon pursuant to Section 652 of Title 21 of the
3 Oklahoma Statutes.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 572A of Title 57, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The Department of Corrections shall request the Governor to
8 declare a state of emergency in the prisons owned by this state
9 whenever the population of the state prison system exceeds
10 ninety-five percent (95%) of the state-owned bed capacity for thirty
11 (30) consecutive days.

12 B. Unless the Governor finds within fifteen (15) calendar days
13 of the Department of Corrections' request to declare a state of
14 emergency that such an emergency does not exist, a prison
15 overcrowding state of emergency shall be in effect.

16 SECTION 4. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 573A of Title 57, unless there
18 is created a duplication in numbering, reads as follows:

19 On the effective date of such an emergency, the Director of the
20 Department of Corrections shall grant sixty (60) days of emergency
21 time credit to any person confined in the prison system who is:

- 22 1. Classified as medium security or any lower security level;
- 23 2. Incarcerated for a nonviolent offense; and

1 3. Not incarcerated for a second or subsequent offense under
2 the provisions of Section 51.1, 51.1a or 51.3 of Title 21 of the
3 Oklahoma Statutes.

4 SECTION 5. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 574A of Title 57, unless there
6 is created a duplication in numbering, reads as follows:

7 If the actions by the Governor to declare a state of emergency
8 and the subsequent actions by the Director of the Department of
9 Corrections to grant emergency time credit to the persons specified
10 in Section 4 of this act do not reduce the population of the prison
11 system to ninety-five percent (95%) or less of the capacity within
12 sixty (60) days of the date of the declaration of the emergency, at
13 the end of the sixty-day period the Director shall grant an
14 additional sixty (60) days of emergency time credit to all persons
15 specified in Section 4 of this act on that date, with such credit to
16 be applied as designated in Section 4 of this act. If at the end of
17 the second sixty-day period, the population of the prison system
18 still exceeds ninety-five percent (95%) of the capacity, the
19 Director shall grant an additional sixty (60) days of emergency time
20 credit to all persons specified in Section 4 of this act.

21 Thereafter, while the state of emergency exists, at the end of each
22 sixty (60) days that the population exceeds ninety-five percent
23 (95%) of capacity, the Director shall grant an additional sixty (60)
24 days of emergency time credits to all persons specified in Section 4

1 of this act; provided, no person eligible for emergency time credit
2 shall receive more than three hundred sixty (360) days of emergency
3 time credit during a year.

4 SECTION 6. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 574.1A of Title 57, unless there
6 is created a duplication in numbering, reads as follows:

7 The Pardon and Parole Board with or without application being
8 made shall begin assessing the conduct and record of an inmate
9 during confinement, who qualifies for emergency time credits, as
10 follows:

11 1. If the inmate has been sentenced to a maximum term of
12 confinement of five (5) years or more, within twenty-one (21) months
13 of his or her projected release date;

14 2. If the inmate has been sentenced to a maximum term of
15 confinement of three (3) years or more, but less than five (5)
16 years, within eighteen (18) months of his or her projected release
17 date; and

18 3. If the inmate has been sentenced to a maximum term of
19 confinement of one (1) year or more, but less than three (3) years,
20 within fifteen (15) months of his or her projected release date.

21 The Board shall determine whether or not the inmate shall
22 qualify for parole. The assessment and determination by the Board
23 shall be completed within three (3) months. Any inmate who, upon
24 consideration by the Board, is not recommended for parole or who

1 refuses consideration for parole, shall not be eligible for further
2 emergency time credits provided for in this act.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 575A of Title 57, unless there
5 is created a duplication in numbering, reads as follows:

6 If at any time during the state of emergency the population of
7 the prison system is reduced to ninety-five percent (95%) or less of
8 the capacity, the Department of Corrections shall certify that fact
9 to the Governor and request the Governor to rescind the state of
10 emergency.

11 If the Governor finds that within fifteen (15) calendar days of
12 the Department's request that the emergency no longer exists, he
13 shall declare the prison overcrowding state of emergency ended
14 within that fifteen-day period.

15 If a state of emergency has been declared by the Governor,
16 pursuant to Section 3 of this act, the Governor shall not declare
17 another state of emergency until the existing state of emergency has
18 been rescinded pursuant to this section. Thereafter, if the prison
19 population exceeds ninety-five percent (95%) of capacity, a
20 subsequent state of emergency shall be declared if the conditions
21 required by Section 3 of this act exist.

22 SECTION 8. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 576A of Title 57, unless there
24 is created a duplication in numbering, reads as follows:

1 The provisions of this act shall not take effect if the state
2 prison population exceeds the state-owned bedspace capacity as the
3 direct result of loss of bedspace due to a natural disaster or
4 deliberate destruction of property.

5 SECTION 9. This act shall become effective November 1, 2009.

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