

SHORT TITLE: Prisons; repealing the Oklahoma Prison Overcrowding
Emergency Powers Act; modifying definition of violent crime;
emergency.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 540

By: Douglass

AS INTRODUCED

An Act relating to prisons; amending 21 O.S. 1991, Section 1273, as last amended by Section 52, Chapter 290, O.S.L. 1994 (21 O.S. Supp. 1994, Section 1273), which relates to selling weapons; deleting language; amending Section 7, Chapter 136, O.S.L. 1992, as amended by Section 17, Chapter 325, O.S.L. 1993 (22 O.S. Supp. 1994, Section 984), which relates to definitions; modifying definition of violent crime; amending 57 O.S. 1991, Sections 365, as amended by Section 7, Chapter 125, O.S.L. 1993, 510.2, as amended by Section 2, Chapter 276, O.S.L. 1993, Section 5, Chapter 276, O.S.L. 1993, Section 4, Chapter 187, O.S.L. 1993, and Section 5, Chapter 187, O.S.L. 1993 (57 O.S. Supp. 1994, Sections 365, 510.2, 510.9, 610 and 611), which relate to Preparole Conditional Supervision Program, House Arrest Program, Electronic Monitoring Program, Prison Population Management Act and Specialized Supervision Program; modifying reference and language; defining terms; changing purpose of certain programs; repealing 57 O.S. 1991, Sections 570, 571, as amended by Section 10, Chapter 276, O.S.L. 1993, 572, 573, 574, 574.1, as amended by Section 11, Chapter 276, O.S.L. 1993, 575 and 576 (57 O.S. Supp. 1994, Sections 571 and 574.1), which relate to the Oklahoma Prison

Overcrowding Emergency Powers Act; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 1273, as last amended by Section 52, Chapter 290, O.S.L. 1994 (21 O.S. Supp. 1994, Section 1273), is amended to read as follows:

Section 1273. A. It shall be unlawful for any person within this state to sell or give to any minor any of the arms or weapons designated in Section 1272 of this title; provided, the provisions of this section shall not prohibit a parent from giving his or her minor child a rifle or shotgun for participation in hunting animals or fowl, hunter safety classes, target shooting, skeet, trap or other recognized sporting events, except as provided in subsection B of this section.

B. It shall be unlawful for any parent or guardian to intentionally, knowingly, or recklessly permit his or her minor child to possess any of the arms or weapons designated in Section 1272 of this title, including any rifle or shotgun, if such parent is aware of a substantial risk that such minor will use the weapon to commit a felony offense or if the minor has either been adjudicated a delinquent or has been convicted as an adult for a felony ~~listed as an exception to the definition of a nonviolent offense in Section 571 of Title 57 of the Oklahoma Statutes.~~

C. It shall be unlawful for any minor to possess any of the arms or weapons designated in Section 1272 of this title, except rifles or shotguns used for participation in hunting animals or fowl, hunter safety classes, target shooting, skeet, trap or other recognized sporting event. Provided, the possession of rifles or shotguns authorized by this section shall not authorize the

possession of such weapons by a minor who is subject to the provisions of Section 1283 of this title.

D. Any person violating this section shall, upon conviction, be punishable as provided in Section 1276 of this title, provided, any minor violating this section shall be subject to adjudication as a delinquent. In addition, any adult or minor person violating this section shall be liable for civil damages for any injury or death to any person resulting from being shot by a minor.

E. As used in this section, "minor" means a person under eighteen (18) years of age.

SECTION 2. AMENDATORY Section 7, Chapter 136, O.S.L. 1992, as amended by Section 17, Chapter 325, O.S.L. 1993 (22 O.S. Supp. 1994, Section 984), is amended to read as follows:

Section 984. As used in ~~this act~~ Section 984 et seq. of this title:

1. "Victim impact statements" means information about the financial, emotional, psychological, and physical effects of a violent crime on each victim and members of their immediate family, or person designated by the victim or by family members of the victim and includes information about the victim, circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion of a recommended sentence;

2. "Members of the immediate family" means the spouse, a child by birth or adoption, a stepchild, a parent, or a sibling of each victim; and

3. "Violent crime" means any crime ~~listed in paragraph 5 of Section 571 of Title 57 of the Oklahoma Statutes or any attempt, conspiracy or solicitation to commit any such crime~~ for which the offender is charged or convicted and as a result of the conduct or attempted conduct of the offender caused physical injury or death to a victim.

SECTION 3. AMENDATORY 57 O.S. 1991, Section 365, as amended by Section 7, Chapter 125, O.S.L. 1993 (57 O.S. Supp. 1994, Section 365), is amended to read as follows:

Section 365. A. Whenever the population of the prison system is certified by the State Board of Corrections as exceeding ninety-five percent (95%) of its capacity, ~~as defined in Section 571 of this title,~~ the Department of Corrections and the Pardon and Parole Board shall implement a Preparole Conditional Supervision Program until such time as the population is reduced to ninety-two and one-half percent (92 1/2%) of capacity, for persons in the custody of the Department of Corrections who meet the following guidelines:

1. Only inmates who are otherwise eligible for parole, pursuant to Sections 332.7 and 332.8 of this title, shall be eligible to participate in this program;

2. An inmate shall serve at least fifteen percent (15%) of his sentence of incarceration and be within one (1) year of his regularly scheduled parole consideration date or be within twenty-one (21) months of his projected release date, prior to being eligible for this program; and

3. Only inmates who have attained the proficiency level established by Section ~~3~~ 510.7 of this ~~act~~ title, unless exempted by said section, or who comply with education requirements as provided in subsection C of Section ~~4~~ 510.8 of this ~~act~~ title shall be eligible for participation in this program.

B. Upon an inmate becoming eligible for this program it shall be the duty of the Pardon and Parole Board, with or without application being made, to cause an examination to be made of the criminal record of the inmate and to make inquiry into the conduct and the record of said inmate during his confinement in the custody of the Department of Corrections.

C. Upon favorable recommendation by the Pardon and Parole Board, notification shall be made to the Department of Corrections that said inmate has been recommended to be placed in this program.

D. Prior to the placement of an inmate on Preparole Conditional Supervision, the Department shall provide written notification to the sheriff and district attorney of the county in which any person on Preparole Conditional Supervision is to be placed and to the chief law enforcement officer of any incorporated city or town in which said person is to be placed of the placement of the person on Preparole Conditional Supervision within the county or incorporated city or town. The Department also shall provide written notification of the placement of the person on Preparole Conditional Supervision within the county or incorporated city or town to any victim of the crime for which the inmate was convicted by mailing the notification to the last-known address of the victim, if such information is requested by the victim. The Department of Corrections shall not give the address of the inmate to any victim of the crime for which the inmate was convicted.

E. Should an inmate violate any rule or condition during the period of community supervision, the inmate shall be subject to disciplinary proceedings as established by the Department of Corrections.

F. Any inmate who escapes from this program shall be subject to the provisions of Section 443 of Title 21 of the Oklahoma Statutes.

G. Any inmate who fails to satisfactorily attend and make satisfactory progress in the educational program in which the inmate has been required to participate as a condition of eligibility for this program shall have his or her eligibility for this program revoked. Any such inmate shall be returned to confinement in the custody of the Department of Corrections.

SECTION 4. AMENDATORY 57 O.S. 1991, Section 510.2, as amended by Section 2, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1994, Section 510.2), is amended to read as follows:

Section 510.2 A. The Department of Corrections may implement a ~~house arrest~~ reintegration program for persons in the custody of the Department, who meet the following guidelines:

1. Only inmates who are incarcerated for a nonviolent offense ~~as defined in Section 571 of this title~~, or inmates who are within six (6) months of their projected release date, except those convicted of a sex-related offense or denied parole within the previous twelve (12) months pursuant to Section 332.7 of this title, shall be eligible to participate in the ~~house arrest~~ reintegration program. For purposes of this section "nonviolent offense" means any crime for which the offender is convicted and as a result of the conduct or attempted conduct of the offender no physical injury or death was inflicted upon any victim.

2. An inmate shall serve at least fifteen percent (15%) of his sentence of incarceration prior to being assigned to the ~~house arrest~~ program.

B. The total number of persons assigned to the ~~house arrest~~ program shall not exceed fifteen percent (15%) of the total population of persons committed to the custody of the Department of Corrections, excluding those on probation and parole; provided, if said total population of persons committed to the custody of the Department decreases so that the percentage of persons on ~~house arrest~~ the program exceeds fifteen percent (15%) of that population, the Department shall not be required to remove inmates from the program. Inmates assigned to the ~~house arrest~~ program shall remain in the program until the completion of the sentence or until the inmate is otherwise removed from the program. An inmate assigned to the ~~house arrest~~ program may be required to pay the costs of supervision or other costs or fees associated with the program while

assigned to the ~~house-arrest~~ program. The Department of Corrections shall determine whether the inmate has the ability to pay all or part of such costs and fees.

C. Prior to any eligible inmate ~~assigned to the house-arrest program~~ being placed in a community setting under a reintegration program, the Department shall deliver written notification to the sheriff and district attorney of the county, and the chief law enforcement officer of any incorporated city or town in which said inmate is to be supervised under the ~~house-arrest~~ program. The district attorney shall disseminate such information to victims of the crime for which the inmate is serving sentence, when the victims are known to live in the same city, town or county.

D. After an inmate has been assigned to ~~the house-arrest a~~ program, failure to be granted parole pursuant to Section 332.7 of this title shall not be cause for removal from the program, provided the inmate has not violated the rules, regulations or conditions of the program. The inmate may remain assigned to ~~the house-arrest a~~ program, if otherwise eligible, until the completion of the sentence.

E. Any inmate violating any rule, regulation or condition of ~~the house-arrest a~~ program shall be subject to disciplinary proceedings as established by the Department of Corrections. Any inmate who escapes from ~~the house-arrest a~~ program shall be subject to the provisions of Section 443 of Title 21 of the Oklahoma Statutes. For purposes of this section, "escape" means a failure to report as required or any violation relating to supervision as determined by the rules of the Department.

F. Any inmate removed from ~~the house-arrest a~~ program for violation of any rule, regulation or condition of the program and reassigned by the Department to imprisonment in a correctional facility shall not be eligible for any future assignment to ~~the house-arrest a~~ reintegration program.

G. Upon an inmate assigned to ~~the house arrest~~ a program becoming eligible for parole consideration, pursuant to Section 332.7 of this title, the Department of Corrections shall deliver the inmate, in person, to a correctional facility for interview, together with any Department records necessary for the Pardon and Parole Board's investigation. Inmates assigned to ~~the house arrest~~ a program shall not be allowed to waive consideration or recommendation for parole.

H. The Department of Corrections shall promulgate and adopt rules, regulations and procedures to implement the provisions of this section.

SECTION 5. AMENDATORY Section 5, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1994, Section 510.9), is amended to read as follows:

Section 510.9 A. There is hereby created the Electronic Monitoring Program for inmates in the custody of the Department of Corrections who are sentenced for a nonviolent offense ~~as defined by Section 571 of Title 57 of the Oklahoma Statutes.~~ For purposes of this section, "nonviolent offense" means any crime for which the offender is convicted and as a result of the conduct or attempted conduct of the offender no physical injury or death was inflicted upon any victim.

B. All eligible inmates assigned to the Electronic Monitoring Program shall first be processed and received through the Lexington Assessment and Reception Center. The Director of the Department of Corrections shall exercise his discretion in selecting eligible inmates for assignment to the Electronic Monitoring Program; provided, however, the following inmates shall not be eligible for assignment to the program:

1. Inmates convicted of a violent offense within the previous ten (10) years. "Violent offense" means any felony crime for which the offender is convicted and as a result of the conduct or

attempted conduct of the offender, caused physical injury or death to a victim;

2. Inmates convicted of any violation of the provisions of the Trafficking in Illegal Drugs Act, Section 2-414 et seq. of Title 63 of the Oklahoma Statutes;

3. Inmates denied parole within the previous twelve (12) months pursuant to Section 332.7 of Title 57 of the Oklahoma Statutes;

4. Inmates convicted pursuant to Section 11-902 of Title 47 of the Oklahoma Statutes who are not receptive to substance abuse treatment and follow-up treatment;

5. Inmates removed from the Electronic Monitoring Program or any other alternative to incarceration authorized by law for violation of any rule, regulation or condition of the program and reassigned to imprisonment in a correctional facility;

6. Inmates deemed by the Department to be a security risk or threat to the public; or

7. Inmates requiring educational, medical or other services or programs not available in a community setting as determined by the Department.

In addition, any inmate removed from the Electronic Monitoring Program for violation of any rule, regulation or condition of the program and reassigned to imprisonment in a correctional facility shall not be eligible for consideration for the Preparole Conditional Supervision Program, pursuant to Section 365 of Title 57 of the Oklahoma Statutes, until after the expiration of at least twelve (12) consecutive months of imprisonment at a correctional facility.

C. Every eligible inmate assigned to the Electronic Monitoring Program shall remain in such program until one of the following conditions has been met:

1. The inmate discharges the term of the sentence;

2. The inmate is removed from the Electronic Monitoring Program for violation of any rule, regulation or condition of the program and reassigned to imprisonment in a correctional facility;

3. The inmate is assigned by the Department to another alternative to incarceration authorized by law, except inmates assigned to the Electronic Monitoring Program shall not be considered for the Preparole Conditional Supervision Program, Section 365 of Title 57 of the Oklahoma Statutes, except as provided in subsection B of this section; or

4. The inmate is paroled by the Governor pursuant to Section 332.7 of Title 57 of the Oklahoma Statutes.

D. After an inmate has been assigned to the Electronic Monitoring Program, failure to be granted parole pursuant to Section 332.7 of Title 57 of the Oklahoma Statutes shall not be cause for removal from the program, provided the inmate has not violated the rules, regulations or conditions of the program. The inmate may remain assigned to the program, if otherwise eligible, until the completion of the sentence.

E. The Electronic Monitoring Program shall require active supervision of the inmate in a community setting by a correctional officer or other employee of the Department of Corrections with monitoring by an electronic bracelet or other device approved by the Department under such rules, regulations and conditions as may be established by the Department. If an inmate violates any rule, regulation or condition of the program, the Department may take necessary disciplinary action consistent with the rules established pursuant to this act, including reassignment to a higher level of security or removing the inmate from the program with reassignment to imprisonment in a correctional facility. Any inmate who escapes from the Electronic Monitoring Program shall be subject to the provisions of Section 443 of Title 21 of the Oklahoma Statutes.

F. Upon an inmate assigned to the Electronic Monitoring Program becoming eligible for parole consideration, pursuant to Section 332.7 of Title 57 of the Oklahoma Statutes, the Department of Corrections shall deliver the inmate, in person, to a correctional facility for interview, together with any Department records necessary for the Pardon and Parole Board's investigation. Inmates assigned to the Electronic Monitoring Program shall not be allowed to waive consideration or recommendation for parole.

G. Prior to any eligible inmate assigned to the Electronic Monitoring Program being placed in a community setting, the Department of Corrections shall deliver a written notification to the sheriff and district attorney of the county, and the chief law enforcement officer of any incorporated city or town in which the inmate is to be monitored and supervised under the program. The district attorney shall disseminate such information to victims of the crime for which the inmate is serving sentence, if any, when the victims are known to live in the same city, town or county.

H. An inmate assigned to the Electronic Monitoring Program may be required to pay the Department of Corrections for all or part of any monitoring equipment or fee, substance abuse treatment program or follow-up treatment expense, supervision cost, or other costs while assigned to the program. The Department shall determine whether the inmate has the ability to pay all or part of such fee or costs.

I. The Department of Corrections shall promulgate and adopt rules, regulation and procedures necessary to implement the Electronic Monitoring Program, including but not limited to methods of monitoring and supervision, disciplinary action, reassignment to higher and lower security levels, removal from the program, and costs of monitoring and supervision to be paid by the inmate, if any.

SECTION 6. AMENDATORY Section 4, Chapter 187, O.S.L. 1993 (57 O.S. Supp. 1994, Section 610), is amended to read as follows:

Section 610. Sections 4 610 and 5 611 of this ~~act~~ title shall be known and may be cited as the "Prison Population Management Act of 1993".

SECTION 7. AMENDATORY Section 5, Chapter 187, O.S.L. 1993 (57 O.S. Supp. 1994, Section 611), is amended to read as follows:

Section 611. A. There is hereby created the "Specialized Supervision Program". The Director of the Department of Corrections shall deliver written notification to the Governor and the Attorney General within ten (10) days from the time the population of the prison system exceeds ninety-seven and one-half percent (97.5%) of the Department's authorized capacity as defined by subsection K of this section. Within fifteen (15) days from the date of such notification, unless the Attorney General finds the population of the prison system does not exceed such authorized capacity and delivers a written objection to the Governor, the Governor shall declare a population state of emergency which shall authorize the assignment of certain eligible inmates to the Specialized Supervision Program pursuant to the provisions of Section 610 et seq. of this ~~act~~ title. Upon an objection properly made to the Governor, the Governor shall have an additional fifteen (15) days for investigation of the objection, and unless the Governor finds a population state of emergency does not exist, the population state of emergency shall be in effect.

B. Upon declaration of the population state of emergency pursuant to this act, the Department of Corrections shall compile a list consisting of the names of those inmates serving sentences for nonviolent offenses ~~as defined by Section 571 of Title 57 of the Oklahoma Statutes~~, who are within twenty-four (24) months of

consideration for the Preparole Conditional Supervision Program pursuant to Section 365 of Title 57 of the Oklahoma Statutes, who have not been previously removed from the Specialized Supervision Program as specified in this section, and who have completed at least one of the following requirements:

1. General Education Diploma (GED);
2. Adult literacy program;
3. Residential substance abuse program;
4. Participation for at least one hundred eighty (180) days on a prisoner public works project;
5. Maintained a class level four, as defined in Section 138 of Title 57 of the Oklahoma Statutes, for two consecutive years;
6. Vocational technical education; or
7. Other education or rehabilitation as may be determined appropriate by the Department.

The list shall be completed within three (3) days of the declaration of a population state of emergency and no other inmate shall be eligible for assignment to the Specialized Supervision Program after the list is completed.

For purposes of this section, "nonviolent offense" means any crime for which the offender is convicted and as a result of the conduct or attempted conduct of the offender no physical injury or death was inflicted upon any victim.

C. The Director shall exercise his discretion in assigning eligible inmates to the Specialized Supervision Program from the list created pursuant to subsection B of this section, provided however, inmates who have been removed from the Specialized Supervision Program and reassigned to imprisonment in a correctional facility for violation of any rule, regulation or condition of the program shall not be eligible for any future assignment to the Specialized Supervision Program and, in addition, shall not be eligible to be considered for the Preparole Conditional Supervision

Program, pursuant to Section 365 of Title 57 of the Oklahoma Statutes, until after the expiration of at least twelve (12) consecutive months of imprisonment at a correctional facility.

D. Any eligible inmate assigned to the Specialized Supervision Program shall remain in such program until one of the following conditions has been met:

1. The inmate discharges the term of the sentence;

2. The inmate is removed from the Specialized Supervision Program and reassigned to imprisonment in a correctional facility;
or

3. The inmate is paroled by the Governor pursuant to Section 332.7 of Title 57 of the Oklahoma Statutes.

E. The Specialized Supervision Program shall require active supervision of the inmate in a community setting by a correctional officer or other employee of the Department of Corrections under such rules, regulations and procedures as may be established pursuant to this act.

F. The following shall apply when an inmate is alleged to have violated any rule, regulation or condition of the Specialized Supervision Program:

1. Written notice shall be given to the inmate specifying the alleged violation of any term or condition of the Specialized Supervision Program;

2. The inmate may request and shall be afforded a hearing concerning the alleged violation; and

3. The inmate may admit, deny or present mitigating evidence concerning the allegations.

The Department shall consider the evidence and determine by a preponderance of the evidence whether a violation has occurred. The Department may take necessary disciplinary action consistent with the rules established pursuant to this act, including reassignment to a higher level of security or removing the inmate from the

program with reassignment to imprisonment in a correctional facility.

G. Inmates assigned to the Specialized Supervision Program shall not be eligible for supervision pursuant to any interstate compact agreement until paroled by the Governor as required by law. Upon an inmate assigned to the Specialized Supervision Program becoming eligible for parole consideration pursuant to Section 332.7 of Title 57 of the Oklahoma Statutes, the Department of Corrections shall deliver the inmate, in person, to the correctional facility for interview, together with any Department records necessary for the Pardon and Parole Board's investigation. Inmates assigned to the Specialized Supervision Program shall not be allowed to waive consideration for parole or parole recommendation.

H. Prior to any eligible inmate assigned to the Specialized Supervision Program being placed in a community setting pursuant to the provisions of this act, the Department of Corrections shall deliver written notification to the sheriff and district attorney of the county, and the chief law enforcement officer of any incorporated city or town in which the inmate is to be supervised under the Specialized Supervision Program. The district attorney shall disseminate such information to victims of the crime for which the inmate is serving sentence, if the victims are known to live in the same city, town or county.

I. Within ten (10) days from the time the population of the prison system is decreased to ninety-five percent (95%) of the Department's authorized capacity, the Director shall deliver written notification to the Governor stating the population state of emergency is over. Additional inmates may not be assigned to the Specialized Supervision Program from the list created pursuant to subsection B of this section after the notice has been delivered to the Governor. Conclusion of a population state of emergency shall

not be construed to alter the assignment of any inmate supervised under the Specialized Supervision Program.

J. The Department shall promulgate and adopt rules, regulations and procedures necessary to implement the provisions of this act including but not limited to methods of supervision, disciplinary action, reassignment to higher or lower security levels, removal from the program, and costs of supervision to be paid by the inmate, if any.

K. As used in this act, "authorized capacity" means that space available at correctional facilities and occupied by or ready for occupancy by inmates in the custody of the Department of Corrections as determined by the Director of the Department.

SECTION 8. REPEALER 57 O.S. 1991, Sections 570, 571, as amended by Section 10, Chapter 276, O.S.L. 1993, 572, 573, 574, 574.1, as amended by Section 11, Chapter 276, O.S.L. 1993, 575 and 576 (57 O.S. Supp. 1994, Sections 571 and 574.1), are hereby repealed.

SECTION 9. 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.

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