

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1872

By: Fetgatter

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to prisons and reformatories;
10 amending 57 O.S. 2011, Section 138, as last amended
11 by Section 4, Chapter 360, O.S.L. 2015 (57 O.S. Supp.
12 2018, Section 138), which relates to credits for good
13 conduct; authorizing disciplinary committee to
14 consider inmate activities that violate orders of
15 sentencing court; updating internal citations; and
16 providing an effective date.

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

17 SECTION 1. AMENDATORY 57 O.S. 2011, Section 138, as last
18 amended by Section 4, Chapter 360, O.S.L. 2015 (57 O.S. Supp. 2018,
19 Section 138), is amended to read as follows:

20 Section 138. A. Except as otherwise provided by law, every
21 inmate of a state correctional institution shall have their term of
22 imprisonment reduced monthly, based upon the class level to which
23 they are assigned. Earned credits may be subtracted from the total
24 credits accumulated by an inmate, upon recommendation of the

1 ~~institution's~~ disciplinary committee of the institution, following
2 due process, and upon approval of the warden or superintendent.
3 Behavior that may be considered by the disciplinary committee of the
4 institution shall include, but not be limited to, any activity on
5 behalf of the inmate, either directly or indirectly, that violates
6 an order of the sentencing court. Each earned credit is equivalent
7 to one (1) day of incarceration. Lost credits may be restored by
8 the warden or superintendent upon approval of the classification
9 committee. If a maximum and minimum term of imprisonment is
10 imposed, the provisions of this subsection shall apply only to the
11 maximum term. No deductions shall be credited to any inmate serving
12 a sentence of life imprisonment; however, a complete record of the
13 ~~inmate's~~ participation by an inmate in work, school, vocational
14 training, or other approved program shall be maintained by the
15 Department for consideration by the paroling authority. No earned
16 credit deductions shall be credited or recorded for any inmate
17 serving any sentence for a criminal act which resulted in the death
18 of a police officer, a law enforcement officer, an employee of the
19 Department of Corrections, or an employee of a private prison
20 contractor and the death occurred while the police officer, law
21 enforcement officer, employee of the Department of Corrections, or
22 employee of a private prison contractor was acting within the scope
23 of their employment. No earned credit deductions shall be credited
24 or recorded for any person who is referred to an intermediate

1 revocation facility for violating any of the terms and conditions of
2 probation.

3 B. The Department of Corrections is directed to develop a
4 written policy and procedure whereby inmates shall be assigned to
5 one of four class levels determined by an adjustment review
6 committee of the facility to which the inmate is assigned. The
7 policies and procedures developed by the Department shall include,
8 but not be limited to, written guidelines pertaining to awarding
9 credits for rehabilitation, obtaining job skills and educational
10 enhancement, participation in and completion of alcohol/chemical
11 abuse programs, incentives for inmates to accept work assignments
12 and jobs, work attendance and productivity, conduct record,
13 participation in programs, cooperative general behavior, and
14 appearance. When assigning inmates to a class level the adjustment
15 review committee shall consider all aspects of the policy and
16 procedure developed by the Department including but not limited to
17 the criteria for awarding credits required by this subsection.

18 C. If an inmate is subject to misconduct, nonperformance or
19 disciplinary action, earned credits may be removed according to the
20 policies and procedures developed by the Department. Earned credits
21 removed for misconduct, nonperformance or disciplinary action may be
22 restored as provided by Department policy, if any.

23 D. 1. Class levels shall be as follows:
24

- 1 a. Class level 1 shall include inmates not eligible to
2 participate in class levels 2 through 4, and shall
3 include, but not be limited to, inmates on escape
4 status.
- 5 b. Class level 2 shall include an inmate who has been
6 given a work, education, or program assignment, has
7 received a good evaluation for participation in the
8 work, education, or program assignment, and has
9 received a good evaluation for personal hygiene and
10 maintenance of living area.
- 11 c. Class level 3 shall include an inmate who has been
12 incarcerated at least three (3) months, has received
13 an excellent work, education, or program evaluation,
14 and has received an excellent evaluation for personal
15 hygiene and maintenance of living area.
- 16 d. Class level 4 shall include an inmate who has been
17 incarcerated at least eight (8) months, has received
18 an outstanding work, education, or program evaluation,
19 and has received an outstanding evaluation for
20 personal hygiene and maintenance of living area.

- 21 2. a. Until November 1, 2001, class level corresponding
22 credits are as follows:

23 Class 1 - 0 Credits per month;

24 Class 2 - 22 Credits per month;

1 Class 3 - 33 Credits per month;

2 Class 4 - 44 Credits per month.

3 b. Class level corresponding credits beginning November
4 1, 2001, for inmates who have ever been convicted as
5 an adult or a youthful offender or adjudicated
6 delinquent as a juvenile for a felony offense
7 enumerated in subsection E of this section are as
8 follows:

9 Class 1 - 0 Credits per month;

10 Class 2 - 22 Credits per month;

11 Class 3 - 33 Credits per month;

12 Class 4 - 44 Credits per month.

13 c. Class level corresponding credits beginning November
14 1, 2001, for inmates who have never been convicted as
15 an adult or a youthful offender or adjudicated
16 delinquent as a juvenile for a felony offense
17 enumerated in subsection E of this section are as
18 follows:

19 Class 1 - 0 Credits per month;

20 Class 2 - 22 Credits per month;

21 Class 3 - 45 Credits per month;

22 Class 4 - 60 Credits per month.

23 Each inmate shall receive the above specified monthly credits
24 for the class to which he or she is assigned. In determining the

1 prior criminal history of the inmate, the Department of Corrections
2 shall review criminal history records available through the Oklahoma
3 State Bureau of Investigation, Federal Bureau of Investigation, and
4 National Crime Information Center to determine the reported felony
5 convictions of all inmates. The Department of Corrections shall
6 also review the Office of Juvenile Affairs Juvenile On-line Tracking
7 System for inmates who were adjudicated delinquent or convicted as a
8 youthful offender for a crime that would be an offense enumerated in
9 subsection E of this section.

10 3. In addition to the criteria established for each class in
11 paragraph 1 of this subsection, the following requirements shall
12 apply to each of levels 2 through 4:

- 13 a. satisfactory participation in the work, education, or
14 program assignment at the standard required for the
15 particular class level,
- 16 b. maintenance of a clean and orderly living area and
17 personal hygiene at the standard required for the
18 particular class level,
- 19 c. cooperative behavior toward facility staff and other
20 inmates, and
- 21 d. satisfactory participation in the requirements of the
22 previous class level.

23 4. The evaluation scale for assessing performance shall be as
24 follows:

- 1 a. Outstanding - For inmates who display consistently
2 exceptional initiative, motivation, and work habits.
- 3 b. Excellent - For inmates who display above-average work
4 habits with only minor errors and rarely perform below
5 expectations.
- 6 c. Good - For inmates who perform in a satisfactory
7 manner and complete tasks as required, doing what is
8 expected, with only occasional performance above or
9 below expectations.
- 10 d. Fair - For inmates who may perform satisfactorily for
11 some periods of time, but whose performance is marked
12 by obviously deficient and weak areas and could be
13 improved.
- 14 e. Poor - For inmates whose performance is unsatisfactory
15 and falls below expected and acceptable standards.

16 E. No person ever convicted as an adult or a youthful offender
17 or adjudicated delinquent as a juvenile in this state for any felony
18 offense enumerated in this subsection or a similar felony offense
19 pursuant to the provisions of another state, the United States, or a
20 military court shall be eligible for the credits provided by the
21 provisions of subparagraph c of paragraph 2 of subsection D of this
22 section.

23 1. Assault, battery, or assault and battery with a dangerous
24 weapon as defined by Section 645~~7~~ or subsection C of Section 652 of

1 Title 21 of the Oklahoma Statutes or Section 2-219 of Title 43A of
2 the Oklahoma Statutes;

3 2. Aggravated assault and battery on a police officer, sheriff,
4 highway patrolman, or any other officer of the law as defined by
5 Section 650, subsection C of Section 650.2, 650.5, subsection B of
6 Section 650.6, or subsection C of Section 650.7 of Title 21 of the
7 Oklahoma Statutes;

8 3. Poisoning with intent to kill as defined by Section 651 of
9 Title 21 of the Oklahoma Statutes;

10 4. Shooting with intent to kill as defined by Section 652 of
11 Title 21 of the Oklahoma Statutes;

12 5. Assault with intent to kill as defined by Section 653 of
13 Title 21 of the Oklahoma Statutes;

14 6. Assault with intent to commit a felony as defined by Section
15 681 of Title 21 of the Oklahoma Statutes;

16 7. Assaults while masked or disguised as defined by Section
17 1303 of Title 21 of the Oklahoma Statutes;

18 8. Entering premises of another while masked as defined by
19 Section 1302 of Title 21 of the Oklahoma Statutes;

20 9. Murder in the first degree as defined by Section 701.7 of
21 Title 21 of the Oklahoma Statutes;

22 10. Solicitation for ~~Murder~~ murder in the first degree as
23 defined by Section 701.16 of Title 21 of the Oklahoma Statutes;

1 11. Murder in the second degree as defined by Section 701.8 of
2 Title 21 of the Oklahoma Statutes;

3 12. Manslaughter in the first degree as defined by Section 711,
4 712 or 714 of Title 21 of the Oklahoma Statutes;

5 13. Manslaughter in the second degree as defined by Section 716
6 or 717 of Title 21 of the Oklahoma Statutes;

7 14. Kidnapping as defined by Section 741 of Title 21 of the
8 Oklahoma Statutes;

9 15. Burglary in the first degree as defined by Section 1431 of
10 Title 21 of the Oklahoma Statutes;

11 16. Burglary with explosives as defined by Section 1441 of
12 Title 21 of the Oklahoma Statutes;

13 17. Kidnapping for extortion as defined by Section 745 of Title
14 21 of the Oklahoma Statutes;

15 18. Maiming as defined by Section 751 of Title 21 of the
16 Oklahoma Statutes;

17 19. Robbery as defined by Section 791 of Title 21 of the
18 Oklahoma Statutes;

19 20. Robbery in the first degree as defined by Section 797 of
20 Title 21 of the Oklahoma Statutes;

21 21. Robbery in the second degree as defined by Section 797 of
22 Title 21 of the Oklahoma Statutes;

23 22. Armed robbery as defined by Section 801 of Title 21 of the
24 Oklahoma Statutes;

1 23. Robbery by two or more persons as defined by Section 800 of
2 Title 21 of the Oklahoma Statutes;

3 24. Robbery with dangerous weapon or imitation firearm as
4 defined by Section 801 of Title 21 of the Oklahoma Statutes;

5 25. Any crime against a child provided for in Section 843.5 of
6 Title 21 of the Oklahoma Statutes;

7 26. Wiring any equipment, vehicle or structure with explosives
8 as defined by Section 849 of Title 21 of the Oklahoma Statutes;

9 27. Forcible sodomy as defined by Section 888 of Title 21 of
10 the Oklahoma Statutes;

11 28. Rape in the first degree as defined by Sections 1111 and
12 1114 of Title 21 of the Oklahoma Statutes;

13 29. Rape in the second degree as defined by Sections 1111 and
14 1114 of Title 21 of the Oklahoma Statutes;

15 30. Rape by instrumentation as defined by Section 1111.1 of
16 Title 21 of the Oklahoma Statutes;

17 31. Lewd or indecent proposition or lewd or indecent act with a
18 child as defined by Section 1123 of Title 21 of the Oklahoma
19 Statutes;

20 32. Sexual battery of a person over 16 as defined by Section
21 1123 of Title 21 of the Oklahoma Statutes;

22 33. Use of a firearm or offensive weapon to commit or attempt
23 to commit a felony as defined by Section 1287 of Title 21 of the
24 Oklahoma Statutes;

1 34. Pointing firearms as defined by Section 1289.16 of Title 21
2 of the Oklahoma Statutes;

3 35. Rioting as defined by Section 1311 or 1321.8 of Title 21 of
4 the Oklahoma Statutes;

5 36. Inciting to riot as defined by Section 1320.2 of Title 21
6 of the Oklahoma Statutes;

7 37. Arson in the first degree as defined by Section 1401 of
8 Title 21 of the Oklahoma Statutes;

9 38. Endangering human life during arson as defined by Section
10 1405 of Title 21 of the Oklahoma Statutes;

11 39. Injuring or burning public buildings as defined by Section
12 349 of Title 21 of the Oklahoma Statutes;

13 40. Sabotage as defined by Section 1262, 1265.4 or 1265.5 of
14 Title 21 of the Oklahoma Statutes;

15 41. Extortion as defined by Section 1481 or 1486 of Title 21 of
16 the Oklahoma Statutes;

17 42. Obtaining signature by extortion as defined by Section 1485
18 of Title 21 of the Oklahoma Statutes;

19 43. Seizure of a bus, discharging firearm or hurling missile at
20 bus as defined by Section 1903 of Title 21 of the Oklahoma Statutes;

21 44. Mistreatment of a vulnerable adult as defined by Section
22 843.1 of Title 21 of the Oklahoma Statutes;

23 45. Sex offender providing services to a child as defined by
24 Section 404.1 of Title 10 of the Oklahoma Statutes;

1 46. A felony offense of domestic abuse as defined by subsection
2 C of Section 644 of Title 21 of the Oklahoma Statutes;

3 47. Prisoner placing body fluid on government employee as
4 defined by Section 650.9 of Title 21 of the Oklahoma Statutes;

5 48. Poisoning food or water supply as defined by Section 832 of
6 Title 21 of the Oklahoma Statutes;

7 49. Trafficking in children as defined by Section 866 of Title
8 21 of the Oklahoma Statutes;

9 50. Incest as defined by Section 885 of Title 21 of the
10 Oklahoma Statutes;

11 51. Procure, produce, distribute, or possess juvenile
12 pornography as defined by Section 1021.2 of Title 21 of the Oklahoma
13 Statutes;

14 52. Parental consent to juvenile pornography as defined by
15 Section 1021.3 of Title 21 of the Oklahoma Statutes;

16 53. Soliciting minor for indecent exposure as defined by
17 Section 1021 of Title 21 of the Oklahoma Statutes;

18 54. Distributing obscene material or child pornography as
19 defined by Section 1040.13 of Title 21 of the Oklahoma Statutes;

20 55. Child prostitution as defined by Section 1030 of Title 21
21 of the Oklahoma Statutes;

22 56. Procuring a minor for prostitution or other lewd acts as
23 defined by Section 1087 of Title 21 of the Oklahoma Statutes;

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1 57. Transporting a child under 18 for purposes of prostitution
2 as defined by Section 1087 of Title 21 of the Oklahoma Statutes;

3 58. Inducing a minor to engage in prostitution as defined by
4 Section 1088 of Title 21 of the Oklahoma Statutes;

5 59. A felony offense of stalking as defined by subsection D of
6 Section 1173 of Title 21 of the Oklahoma Statutes;

7 60. Spread of infectious diseases as defined by Section 1192 of
8 Title 21 of the Oklahoma Statutes;

9 61. Advocate overthrow of government by force, commit or
10 attempt to commit acts to overthrow the government, organize or
11 provide assistance to groups to overthrow the government as defined
12 by Section 1266, 1266.4 or 1267.1 of Title 21 of the Oklahoma
13 Statutes;

14 62. Feloniously discharging a firearm as defined by Section
15 1289.17A of Title 21 of the Oklahoma Statutes;

16 63. Possession, use, manufacture, or threat of incendiary
17 device as defined by Section 1767.1 of Title 21 of the Oklahoma
18 Statutes;

19 64. Causing a personal injury accident while driving under the
20 influence as defined by Section 11-904 of Title 47 of the Oklahoma
21 Statutes; or

22 65. Using a motor vehicle to facilitate the discharge of a
23 firearm as defined by Section 652 of Title 21 of the Oklahoma
24 Statutes.

1 F. The policy and procedure developed by the Department of
2 Corrections shall include provisions for adjustment review
3 committees of not less than three members for each such committee.
4 Each committee shall consist of a classification team supervisor who
5 shall act as chairman, the case manager for the inmate being
6 reviewed or classified, a correctional officer or inmate counselor,
7 and not more than two other members, if deemed necessary, determined
8 pursuant to policy and procedure to be appropriate for the specific
9 adjustment review committee or committees to which they are
10 assigned. At least once every four (4) months the adjustment review
11 committee for each inmate shall evaluate the class level status and
12 performance of the inmate and determine whether or not the class
13 level for the inmate should be changed.

14 Any inmate who feels aggrieved by a decision made by an
15 adjustment review committee may utilize normal grievance procedures
16 in effect with the Department of Corrections and in effect at the
17 facility in which the inmate is incarcerated.

18 G. Inmates granted medical leaves for treatment that cannot be
19 furnished at the penal institution where incarcerated shall be
20 allowed the time spent on medical leave as time served. Any inmate
21 placed into administrative segregation for nondisciplinary reasons
22 by the ~~institution's~~ administration of the institution may be placed
23 in Class 2. The length of any jail term served by an inmate before
24 being transported to a state correctional institution pursuant to a

1 judgment and sentence of incarceration shall be deducted from the
2 term of imprisonment at the state correctional institution. Inmates
3 sentenced to the Department of Corrections and detained in a county
4 jail as a result of the ~~Department's~~ reception scheduling procedure
5 of the Department shall be awarded earned credits as provided for in
6 subparagraph b of paragraph ~~1~~ 2 of subsection D of this section,
7 beginning on the date of the judgment and sentence, unless the
8 inmate is convicted of a misdemeanor or felony committed in the jail
9 while the inmate is awaiting transport to the Lexington Assessment
10 and Reception Center or other assessment and reception location
11 determined by the Director of the Department of Corrections.

12 H. Additional achievement earned credits for successful
13 completion of departmentally approved programs or for attaining
14 goals or standards set by the Department shall be awarded as
15 follows:

16 Bachelor's degree.....200 credits;
17 Associate's degree.....100 credits;
18 High School Diploma or High School
19 Equivalency Diploma.....90 credits;
20 Certification of Completion of
21 Vocational Training.....80 credits;
22 Successful completion of
23 Alcohol/Chemical Abuse Treatment
24

1 Program of not less than four (4)
2 months continuous participation.....70 credits;
3 Successful completion of other
4 Educational Accomplishments or
5 other programs not specified in
6 this subsection.....10-30 credits;

7 Achievement earned credits are subject to loss and restoration in
8 the same manner as earned credits.

9 I. The accumulated time of every inmate shall be tallied
10 monthly and maintained by the institution where the term of
11 imprisonment is being served. A record of said accumulated time
12 shall be:

13 1. Sent to the administrative office of the Department of
14 Corrections on a quarterly basis; and

15 2. Provided to the inmate.

16 SECTION 2. This act shall become effective November 1, 2019.

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18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/27/2019 - DO
19 PASS, As Amended.
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