



Mary Fallin
Governor

FILED

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OKLAHOMA SECRETARY
OF STATE

EXECUTIVE DEPARTMENT
GUBERNATORIAL MEMORANDUM 2015-01

MEMORANDUM FOR THE STATE BOARD OF CORRECTIONS

SUBJECT: Earned Credit Policies

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power and authority vested in me by Section 2 of Article VI of the Oklahoma Constitution, hereby direct the State Board of Corrections to amend its earned credit and sentence administration policies to more accurately reflect the plain language of the statutes of Oklahoma.¹

BACKGROUND

It is the policy of the State of Oklahoma to use an earned credit system as an aide to corrections management. Oklahoma statutes set forth the general earned credit policy, which is that "every inmate of a state correctional institution shall have their term of imprisonment reduced monthly, based upon the class level to which they are assigned."² Oklahoma statutes further contemplate that the Department of Corrections, through the State Board of Corrections, will develop policies and procedures to implement this earned credit system. These policies and procedures must accurately reflect both the general earned credit policy and legislative exceptions to the general earned credit policy.

Before 1999, some statutes reflected specific exceptions to the general earned credit policy. For example, 63 O.S. § 2-401, which was enacted in 1969 and provided for that offense, an inmate "shall serve a minimum of fifty percent (50%) of the sentence received **prior to becoming eligible for**" earned credits. As a result, the Department of Corrections applied the "**prior to becoming eligible for**" concept in its earned credit computations as an exception to the general earned credit policy.

TRUTH IN SENTENCING

In 1999, Oklahoma sought to achieve greater clarity and certainty in sentence administration. As part of this reform effort, Oklahoma passed what was known as the 85%

¹ 57 O.S. § 504 provides that the State Board of Corrections shall have the power and duty to establish policies for the operation of the Department of Corrections.

² 57 O.S. § 138

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Rule. The legislature abandoned its earlier concept that an inmate be required to serve a designated portion of a criminal sentence “**prior to becoming eligible for**” various earned credits. It adopted a new standard that an inmate is not eligible to receive an amount of earned credits “which have the effect of” reducing a sentence below a specified minimum time. It did not disallow the earning of credits, it simply capped those credits an offender is eligible to receive at 15% of the court imposed sentence.

For example, 21 O.S. § 12.1, was passed as part of the truth in sentencing reforms and included the following statutory provision, “Such person shall not be eligible for parole consideration prior to serving eighty-five percent (85%) of the sentence imposed and such person shall not be eligible for earned credits or any other type of credits **which have the effect of** reducing the length of the sentence to less than eighty-five percent (85%) of the sentence imposed.” A companion statute, 21 O.S. § 13.1, provided, “[p]ersons convicted of these offenses shall not be eligible for earned credits or any other type of credits **which have the effect of** reducing the length of the sentence to less than eighty-five percent (85%) of the sentence imposed.”

The Oklahoma Court of Criminal Appeals recognized this change in Oklahoma law in *Anderson v. State*, 2006 OK CR 6, 130 P.3d 273, 278, “[o]n March 1, 2000, legislation enacting Oklahoma's 85% Rule went into effect. This legislation was part of a “truth in sentencing” movement nationwide. One important goal of the “truth in sentencing” laws is to give jurors, and the general public, accurate information about sentencing.”

Although the legislature adopted this new approach to earned credit management in 1999, the Department of Corrections continued to use the “prior to becoming eligible for” rubric in its operating procedures. It continues to do so today.

The lack of incorporation of the new “truth in sentencing” standard of 1999 by the Department of Corrections has resulted in an unintended result. Today, inmates sentenced to “85%” crimes typically serve in excess of 90% of the sentence which was imposed by the court despite the fact that the majority of them would have, if permitted by the Department of Corrections, earned enough credits to be released at 85%. The jury which sentenced the inmate was told that the inmate would “not be eligible for any credits that will reduce the length of imprisonment to less than eighty-five percent (85%) of the sentence imposed.”³ However, the effect of the Department of Correction’s operating procedures is that the inmates are being required to serve substantially more time than the 85% required by law.

TRAFFICKING

Since the “Truth in Sentencing” reforms which took effect in March 2000, the legislature has twice modified the earned credit standards for specific trafficking offenses. 63 O.S. § 2-415

³ OUJI-CR 10-13A - REQUIRED SERVICE OF 85% OF SENTENCE

(D)(4), the *Trafficking in Illegal Drugs Act* was modified in 2007 to provide that “[t]he person shall serve eighty-five percent (85%) of the sentence before being eligible” for any earned credits.” Again in May 2014, 21 O.S. § 748, a human trafficking offense provided that the person would serve eighty-five percent (85%) of the sentence before being eligible for any earned credits.

CONCLUSION

It is clear that the current one size fits all policy of the Department of Corrections does not correctly reflect the law of Oklahoma. **I hereby direct the State Board of Corrections to immediately amend its earned credit policy to more accurately reflect the plain language of the statutes of Oklahoma** and incorporate the “truth in sentencing” standard along with the stricter “before being eligible” standard retained in a few statutes. The policies and procedures must more accurately reflect the specific standard outlined by the legislature for the specific offense for which the inmate was sentenced.

LIMITATIONS

Nothing in this memorandum shall be construed to impair the authority granted by law to a department, agency, or the head thereof; or the functions of the Judicial branch of government.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Oklahoma, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

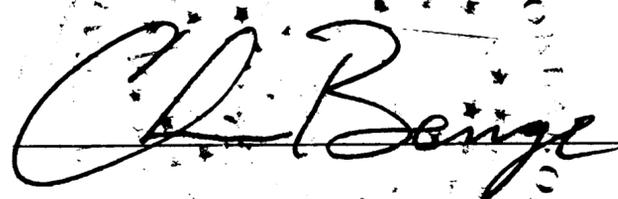
IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 1st day of July 2015.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA



MARY FALLIN

ATTEST:



SECRETARY OF STATE