

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1453

BY: RICE

AS INTRODUCED

AN ACT RELATING TO CRIMINAL PROCEDURE; AMENDING SECTION 1, CHAPTER 150, O.S.L. 1988 (22 O.S. SUPP. 1990, SECTION 991a-4), WHICH RELATES TO THE COMMUNITY SERVICES SENTENCING PROGRAM; MODIFYING PROVISIONS RELATING TO TORT LIABILITY; SPECIFYING IMMUNITY TO THE EXTENT PROVIDED IN THE GOVERNMENTAL TORT CLAIMS ACT; PROVIDING FOR DEFENSE AND INDEMNIFICATION FOR CERTAIN OTHER ACTS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY Section 1, Chapter 150, O.S.L. 1988 (22 O.S. Supp. 1990, Section 991a-4), is amended to read as follows:

Section 991a-4. A. There is hereby created the "Community Service Sentencing Program". The purpose of the program shall be to provide an alternative to incarceration for nonviolent felony offenders who would normally be sentenced to incarceration in a state institution.

B. Any eligible offender may be sentenced, at the discretion of the judge, to a Community Service Sentencing Program pursuant to the

provisions of this section. For purposes of this section, "eligible offender" shall mean any person who:

1. Is not participating in the Delayed Sentencing Program for Young Adults pursuant to the provisions of Section 996 ~~et seq. of Title 22 of the Oklahoma Statutes~~ through 996.3 of this title;

2. Has not previously been convicted of two or more felonies;

3. Has been convicted of a nonviolent felony offense which shall be defined as any felony offense except assault and battery with a dangerous weapon, aggravated assault and battery on a law officer, poisoning with intent to kill, shooting with intent to kill, assault with intent to kill, assault with intent to commit a felony, murder in the first degree, murder in the second degree, manslaughter in the first degree, manslaughter in the second degree, kidnapping, burglary in the first degree, kidnapping for extortion, maiming, robbery, child beating, wiring any equipment, vehicle, or structure with explosives, forcible sodomy, rape in the first degree or rape by instrumentation, lewd or indecent proposition or lewd or indecent act with a child under sixteen (16) years of age, use of a firearm or offensive weapon to commit or attempt to commit a felony, pointing firearms, rioting or arson in the first degree;

4. Has properly completed and executed all necessary documents;
and

5. Is not otherwise ineligible by law or court rule.

C. The Probation and Parole Division of the Department of Corrections shall administer the Program, except in counties with a population of five hundred fifty thousand (550,000) or more persons that operate an existing program. The Division shall conduct a presentence investigation pursuant to the provisions of Section 982 of ~~Title 22 of the Oklahoma Statutes~~ this title if the court determines the offender is to be assigned to the Program. As part of such presentence investigation, the Division shall interview the offender and advise him of the requirements and conditions of the

Program. The Division shall recommend an assignment of the offender to any one or combination of the following areas:

1. Community service, with or without compensation;
2. Education, vocational-technical education or literacy

programs;

3. Substance abuse treatment programs;
4. Periodic testing for the presence of controlled substances;
5. Psychological counseling or psychiatric treatment;
6. Medical treatment;

7. Restitution, to be paid either to the victim of the offense or to the Crime Victims Compensation Revolving Fund created pursuant to the provisions of Section 142.17 of Title 21 of the Oklahoma Statutes;

8. Confinement in a county jail for a period not to exceed six (6) months, night or weekend incarceration pursuant to the provisions of Section 991a-2 of ~~Title 22 of the Oklahoma Statutes~~ this title or incarceration by the Department of Corrections; provided, the Department of Corrections shall reimburse a county which does not receive payments from any other source for the cost of the necessary expenses of such persons during periods of such incarceration in an amount not to exceed Twenty Dollars (\$20.00) per day and any county receiving such payments in an amount not to exceed Ten Dollars (\$10.00) per day. The Department shall reimburse the county for the actual cost paid for any emergency medical care for physical injury or illness of such persons if the county is required by law to provide such care for inmates in the jail. The reimbursements provided by this section shall not exceed the cost that would have accrued to the state for the feeding, care or medical care of the persons had they been incarcerated with the Department. Except as otherwise provided by law, all provisions of the Oklahoma Corrections Act of 1967, Section 501 et seq. of Title 57 of the Oklahoma Statutes, shall apply to such persons, including

but not limited to any provisions requiring payment by such persons of the costs of incarceration; or

9. Probation or conditional probation.

D. The judge shall consider the criminal history of the offender, the nature of the offender's criminal conduct, the employment and family history of the offender and any other factors he deems relevant when sentencing persons to the Program. Following the presentence investigations and recommendation, the judge shall impose sentence. The judge may accept the recommendation, with or without modifications thereto, or may reject the recommendation and impose any sentence allowed by law.

E. The provisions of Sections 20, 58.3, 138, 138.1 and 224 of Title 57 of the Oklahoma Statutes and Section 615 of Title 69 of the Oklahoma Statutes and any other provisions of law relating to earned credits for certain acts or service shall not apply to persons participating in the Program. The judge may establish a schedule of earned credits as part of the sentence.

F. The Division shall establish a list of federal, state and local government agencies, community service agencies, educational programs and other treatment programs willing to participate in the program to which offenders may be referred. The Division shall periodically contact agencies and programs to which offenders are assigned to determine if offenders have reported and performed satisfactorily. Any such agency or program shall immediately notify the Division if an offender fails to fulfill any requirement of the Program. The Division or the sentencing judge may require additional documentation of the offender's work performance.

G. The Division shall ensure that the sentencing judge and prosecuting attorney are notified in writing when an offender has successfully completed the assigned community service hours or other requirements of the Program or has failed to complete the

requirements and provide any other relevant information required by the sentencing judge or prosecuting attorney.

H. The State of Oklahoma, all counties and municipalities of this state and all nonprofit or educational organizations or institutions participating in the Program are hereby immune from liability for torts committed by or against any offender participating in the Program to the extent specified in The Governmental Tort Claims Act and in Sections 227 and 228 of Title 57 of the Oklahoma Statutes; provided further, the state and any political subdivision participating in the Program shall provide a defense for alleged violations specified in subsection A of Section 162 of Title 51 of the Oklahoma Statutes and indemnification for judgments entered for violations specified in said subsection.

I. Any offender participating in the Program shall be advised of the provisions of this section and shall, in writing, acknowledge that he has been advised of and understands the provisions of the Program.

SECTION 2. This act shall become effective September 1, 1991.

43-1-5769

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