

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2505

By: Hilliard

AS INTRODUCED

An Act relating to the Oklahoma Community Sentencing Act; amending Section 50, Chapter 133, O.S.L. 1997, Section 54, Chapter 133, O.S.L. 1997, as amended by Section 15, Chapter 333, O.S.L. 1997, Section 57, Chapter 133, O.S.L. 1997, as amended by Section 17, Chapter 333, O.S.L. 1997, and Section 58, Chapter 133, O.S.L. 1997 (22 O.S. Supp. 1997, Sections 987.12, 987.16, 987.19 and 987.20), which relate to community-sentenced offenders; modifying provisions regarding payment of medical and dental expenses; modifying purposes for which certain monies may be used; providing community sentence may be served in custody of Department of Corrections under certain circumstances; modifying transportation responsibilities of sheriff; amending 57 O.S. 1991, Section 38, as last amended by Section 76, Chapter 133, O.S.L. 1997 (57 O.S. Supp. 1997, Section 38), which relates to jail reimbursement rates; modifying rate for community-sentenced inmates; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 50, Chapter 133, O.S.L. 1997 (22 O.S. Supp. 1997, Section 987.12), is amended to read as follows:

Section 987.12 A. Any person sentenced to a community punishment pursuant to the provisions of the Oklahoma Community Sentencing Act shall not be deemed an inmate, nor shall the person be considered to be in the custody of the Department of Corrections, nor shall the person require processing through the Lexington Reception and Assessment Center. Persons sentenced to community punishment pursuant to the applicable state sentencing matrix or otherwise as authorized by law, shall be in community custody within the county.

~~B. Except as otherwise specifically provided by law, persons sentenced to a community punishment shall not have medical or dental expenses paid by the Department of Corrections or reimbursed by the Community Sentencing Division. Each local community sentencing system shall be required to budget for minor required medical or dental expenses for persons participating in the local system. The local system shall request a medical or dental co-payment for any medical or dental services delivered to offenders sentenced to a community punishment.~~

~~C. The local administrator may request the Community Sentencing Division within the Department of Corrections to provide emergency medical assistance to a local community sentencing system or to an individual offender when the emergency is beyond the budget of the local system. When a request for emergency medical services is made, the Division shall negotiate the necessary medical assistance through an appropriate state agency on a case-by-case basis.~~

~~D. Any felony offender requiring extensive medical treatment or services relating to confinement, which is a court-ordered part of a~~

community sentence pursuant to the authority of the applicable state sentencing matrix, may be transferred to the Department of Corrections for appropriate treatment upon order of the court. The offender shall be returned to the local system following the necessary medical treatment or upon completion of the sentence.

~~E. C.~~ 1. The state will pay all required medical or dental expenses while a person is incarcerated in the county jail, ~~provided the state has the obligation to pay for the term of incarceration pursuant to the provisions of this act~~ on a community sentence. For persons sentenced under the authority of Field 2 or Field 3 punishment levels of the matrices, the state will pay required medical expenses for a maximum of one (1) year while incarcerated in the county jail. If the sentencing judge under the authority of Field 2 or Field 3 punishment levels orders any term of imprisonment less than one (1) year, the state will pay required medical or dental expenses for up to a total of one (1) year for incarceration and disciplinary jail sanctions combined.

2. The state will pay up to a maximum of thirty (30) days on required medical expenses while a person is incarcerated in the county jail pursuant to Field 4 punishment levels of the state's sentencing matrix, and this shall be only for required medical or dental expenses occurring during periods of disciplinary sanction in the county jail.

SECTION 2. AMENDATORY Section 54, Chapter 133, O.S.L. 1997, as amended by Section 15, Chapter 333, O.S.L. 1997 (22 O.S. Supp. 1997, Section 987.16), is amended to read as follows:

Section 987.16 A. Each fiscal year the Community Sentencing Division within the Department of Corrections shall establish a statewide community sentencing system budget to meet legislative appropriations for that purpose. The statewide community sentencing budget shall provide goals and funding priorities for community punishment and treatment within the applicable state sentencing

matrices and as otherwise provided by law. The statewide community sentencing system shall be composed of local community sentencing system plans as approved by the Division. A funding formula shall be developed for allocation of state funds to each local system for day-to-day operation during a fiscal year. The Division and each of the local community sentencing systems are required to operate within the appropriated funds. The state shall require each local community sentencing system to identify resources other than state funds as part of the funding formula. The Division shall establish procedures for disbursement of state funds to service providers, and shall disburse state funds in a timely manner.

B. 1. For a local community sentencing system to remain eligible for maximum state funding, a local community sentencing system shall:

- a. demonstrate fiscal responsibility by operating the local system within the plan and budget allocation,
- b. require performance-based selection of service providers participating in the annual system plan,
- c. offer a continuum of sanctions for felony offenders sentenced to the local community sentencing system and appropriately assign offenders for services, and
- d. comply with the rules promulgated by the Community Sentencing Division within the Department of Corrections and the provisions of the Oklahoma Community Sentencing Act.

2. State funding may be reduced to any jurisdiction in a subsequent plan year where there is a:

- a. demonstrated misuse of services or funds,
- b. significant lack of innovation or performance-based effectiveness of the system, or
- c. demonstrated failure to appropriately target offenders for services.

C. The Community Sentencing Division within the Department of Corrections shall review and evaluate all community sentencing system plans and budget requests when plans are submitted for approval and funding. The Division is directed to automatically approve all plans complying with the provisions of the Oklahoma Community Sentencing Act which require no state funding.

D. When state funding is required to implement a local community sentencing system plan, the Community Sentencing Division shall approve the plan only to the extent that the jurisdiction's share of the total state appropriations will support the implementation of the local system plan. Modification to a local plan shall be for budgetary purposes, as provided in Section ~~10~~ 987.7 of this ~~act~~ title.

E. All state funding shall be subject to appropriations by the Legislature. When any county resources have been committed in support of a community service program in existence prior to January 1, 1997, or a community sentencing system plan, those resources shall not be withdrawn by any county official during a plan year without penalty as provided by the rules promulgated for this act.

F. Except as provided in subsection H of Section 991a-2 of ~~Title 22 of the Oklahoma Statutes~~ this title, state funds from the Community Sentencing Division disbursed for community sentencing systems shall be used for operation and administrative expenses and shall not be used to construct, ~~renovate, remodel, expand or improve~~ any jail, residential treatment facility, restrictive housing facility, or any other structure, nor shall these funds be used to replace funding or other resources from the federal, state, county or city government committed in support of the detailed system plan during the plan year.

G. Any funds accruing to the benefit of a community sentencing system shall be deposited in the Oklahoma Community Sentencing Revolving Fund created as provided in Section ~~62~~ 557.1 of Title 57

of the Oklahoma ~~Truth in Sentencing Act~~ Statutes, and shall be credited to the local jurisdiction making such deposit. The Community Sentencing Division within the Department of Corrections is authorized to apply for and accept grants, gifts, bequests and other lawful money from nonprofit private organizations, for-profit organizations, political subdivisions of this state, the United States, and private citizens.

H. Requests for capital expenditures in support of the local community sentencing system shall be made as provided by the rules promulgated by the Community Sentencing Division within the Department of Corrections.

I. For purposes of calculating state funding for local community sentencing systems budgets for various punishment levels of the state's sentencing matrices, supervision, treatment, and education shall be the first funding priorities.

SECTION 3. AMENDATORY Section 57, Chapter 133, O.S.L. 1997, as amended by Section 17, Chapter 333, O.S.L. 1997 (22 O.S. Supp. 1997, Section 987.19), is amended to read as follows:

Section 987.19 A. When ordering a community sentence or community punishment pursuant to the applicable state sentencing matrix or as otherwise provided by law, the court shall impose the punishment appropriate for the offense as authorized by law, and may order appropriate treatment as authorized by law. The local community sentencing system administrator shall have authority for all offender placements within the local community sentencing system.

B. Persons convicted of or pleading guilty or nolo contendere to a misdemeanor offense or a combination of misdemeanor and felony offenses may receive services from a local community sentencing system when the county agrees in writing to pay the Community Sentencing Division within the Department of Corrections for the actual costs of services used for misdemeanor cases; provided,

however, this provision shall not preclude any felony offender from receiving services as required by law. The community sentencing planning council as provided in Sections ~~8~~ 987.5 and ~~9~~ 987.6 of this act title shall recommend to the local administrator whether or not any programs or services will be offered for misdemeanor cases. The Community Sentencing Division shall have the responsibility for entering into the written agreement with the county for the required payments since no state funds shall be used to pay for misdemeanor offenses.

C. Any time during the term of a community sentence, the court imposing the sentence may modify any previous provision as provided in this section upon motion of the district attorney, the defense attorney, or the offender. The authority to modify a community sentence shall not apply to any person who:

1. Is incarcerated in any state correctional facility;
2. Is subject to a suspended sentence or portion thereof;
3. Is subject to a delayed sentence; or
4. Is subject to the provisions of Section 996 et seq. of ~~Title 22 of the Oklahoma Statutes~~ this title.

D. Upon consideration of a properly filed motion to modify a community sentence pursuant to the provisions of this section, the staff of the community sentencing system in which the offender is ordered to participate, the sheriff, the district attorney, the service provider, or any agency or person providing supervision of the offender shall provide the court with any reports and other information available and relating to the offender, and to the reason for the motion to modify the sentence. The court shall consider any reports and information submitted prior to modifying the sentence.

E. If the court considers a motion to modify a community sentence, a hearing shall be held in open court. The notice of the hearing shall be given to the offender, the offender's legal

counsel, and the district attorney of the county in which the offender was convicted not less than ten (10) days prior to the hearing. A copy of any reports to be presented to the court shall accompany the notice of hearing.

F. Following the hearing, the court shall enter the appropriate order authorized by law. The court may modify any community sentence by imposing any other punishment allowed by law for the offense and appropriate for the circumstances as determined by the discretion of the judge; provided, however, no punishment shall be imposed which is greater than the maximum punishment allowed by law for the original offense. The court shall give the offender day-for-day credit on any modified sentence for any community time served, whether or not any term of incarceration was imposed. The court may decline to modify a community sentence and impose either a disciplinary sanction or an incentive as provided in Section ~~58~~ 987.20 of ~~the Oklahoma Truth in Sentencing Act~~ this title.

G. The court shall not be limited on the number of modifications a sentence may have within the term of the community sentence.

H. Any offender who files a meritless or frivolous motion to modify a community sentence shall pay the costs of the proceeding and may be sanctioned as deemed appropriate by the court.

I. The Department of Corrections shall establish rules for revoking a community sentence to a Department of Corrections penal institution. The maximum term of any imprisonment given on a revocation of a community sentence to the custody of the Department of Corrections shall not exceed the prescribed term of incarceration for the offense as provided in the state's sentencing matrices. When a community sentence is revoked to state imprisonment, the court shall give a day-for-day credit for all time served in the community.

J. For purposes of the Oklahoma Community Sentencing Act and the state's sentencing matrices for Fields 2, 3 and 4 punishment levels, any offender convicted and sentenced for a first time community sentence shall have the criminal record expunged for that offense upon a successful completion of the community sentence. When the local administrator of the community corrections system where the offender has served the sentence has filed the final documentation of completion of the community sentence, the court shall order the verdict or plea of guilty or plea of nolo contendere to be expunged for that offense from the record and the charge dismissed of record. For subsequent offenses for which the person is convicted, the effect of this provision shall be to treat the first expungement as a prior conviction when applying any applicable enhancements.

K. An offender may be ordered to serve a community sentence at a Department of Corrections facility upon certification by the sheriff of the sentencing county to the court that the county jail does not have space for the offender.

SECTION 4. AMENDATORY Section 58, Chapter 133, O.S.L. 1997 (22 O.S. Supp. 1997, Section 987.20), is amended to read as follows:

Section 987.20 A. Upon proper motion to the court to modify a community sentence as provided in Section ~~57~~ 987.19 of this ~~act~~ title, the judge shall have authority to impose disciplinary sanctions. An order for a disciplinary sanction shall not modify the terms of the original sentence and shall be used to gain compliance with the original court order. The Community Sentencing Division within the Department of Corrections shall establish maximum funding of disciplinary sanctions for targeted offenses within the state's sentencing matrices. Disciplinary sanctions ordered in excess of the established funding priorities shall not be reimbursed by the state. The court may order any community

punishment available in the jurisdiction deemed appropriate by the judge for the circumstance including, but not limited to, a term of imprisonment not to exceed five (5) days per disciplinary order in either:

1. The county jail;
2. A residential treatment facility;
3. A restrictive housing facility; or
4. A halfway house.

~~The~~ Upon order of the court, the sheriff shall deliver the offender to the designated place of confinement, provided the place of confinement has an agreement for confinement services, including reimbursement of the transportation costs, with the local community sentencing system. The offender shall be given day-for-day credit for any terms of incarceration served in the county jail or other restrictive facility when the sentence must be modified or revoked.

B. The court may, through a standing court order, provide for specific disciplinary sanctions and incentives which may be utilized by the local administrator upon notification to the court.

C. The court shall have authority to offer incentives to offenders to encourage proper conduct in the community and for compliance with the court orders. The court shall use its discretion in ordering appropriate incentives. Incentives shall be considered a modification to the original sentence and may be ordered after the motion to modify has been heard.

D. When any offender is disciplined by the court as authorized by this section and is to be imprisoned in the county jail or other restrictive facility, the sheriff or facility administrator shall receive compensation as provided by their agreement with the local community sentencing system, or the sheriff or facility administrator shall be paid directly for the services by the offender when ordered to pay for the confinement as part of the disciplinary sanction. In no event shall any compensation for

disciplinary confinement exceed the maximum amount provided for county jail confinement in subsection B of Section 38 of Title 57 of the Oklahoma Statutes, or the amount provided by a service agreement with a private provider included in the local system plan.

E. The Department of Corrections is prohibited from accepting offenders into state correctional facilities for disciplinary sanctions and is prohibited from contracting to pay for any offender imprisoned in the county jail for disciplinary sanctions or when sentenced to another restrictive facility as a disciplinary sanction; provided, however, the Department shall pay for any parolee or inmate serving a community assignment pursuant to law when that person must be imprisoned in the county jail for a disciplinary sanction authorized by the Department of Corrections.

SECTION 5. AMENDATORY 57 O.S. 1991, Section 38, as last amended by Section 76, Chapter 133, O.S.L. 1997 (57 O.S. Supp. 1997, Section 38), is amended to read as follows:

Section 38. A. The Department of Corrections shall reimburse any county, which is required to retain an inmate pursuant to paragraph 2 of Section 37 of this title, in an amount not to exceed Twenty-four Dollars (\$24.00) per day for each inmate during such period of retention. The proceeds of this reimbursement shall be used to defray expenses of equipping and maintaining the jail and payment of personnel. The Department of Corrections shall reimburse the county for the actual costs paid for any emergency medical care for physical injury or illness of the inmate retained under this resolution if the injury or illness is directly related to the incarceration and the county is required by law to provide such care for inmates in the jail. The Director may accept any inmate required to have extended medical care upon application of the county.

B. The state shall provide funding for county jail incarceration for eligible felony offenders pursuant to the

provisions of the Oklahoma Community Sentencing Act at a rate of ~~Twenty Dollars (\$20.00)~~ Twenty-four Dollars (\$24.00) per day per person imprisoned for a maximum term as specified in this act.

SECTION 6. This act shall become effective July 1, 1998.

SECTION 7. 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.

46-2-9229

LAC