

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL 565

By: Wilkerson of the Senate

and

Askins of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to criminal law; amending 22 O.S. 1991, Section 982, as last amended by Section 22 of Enrolled Senate Bill No. 614 of the 1st Session of the 47th Oklahoma Legislature, which relates to sentencing procedures; providing alternative procedure; amending Section 40, Chapter 133, O.S.L. 1997 (22 O.S. Supp. 1998, Section 987.2), as last amended by Section 25 of Enrolled Senate Bill No. 614 of the 1st Session of the 47th Oklahoma Legislature, which relates to the Oklahoma Community Sentencing Act; modifying eligibility criteria; correcting name; requiring forfeiture of certain profits derived from crimes; providing for deposit of certain funds; providing for creation of lien; providing criminal penalties for contracting in violation of this section; providing for payments from certain profits deposited in escrow account; providing procedures for recovery of certain money; providing procedure for jury in criminal trial; providing penalties for bail violations; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 982, as last amended by Section 22 of Enrolled Senate Bill No. 614 of the 1st Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 982. A. Whenever a person is convicted of a felony or has entered a plea other than not guilty except when the death sentence or sentence to life without the possibility of parole is imposed, the court shall, before imposing sentence to commit any

felon to the custody or supervision of the Department of Corrections, either order a presentence investigation to be made by the Department or order a Level of Services Inventory or other comparable criminal offender risk/need assessment to be performed.

The court may order the defendant to pay a fee to the Department of Corrections not to exceed Two Hundred Fifty Dollars (\$250.00) for any presentence investigation, if in the opinion of the court the defendant has the ability to pay such fee. The court may order the defendant to pay the cost of any Level of Services Inventory (LSI) or other comparable criminal offender risk/need assessment performed, if, in the opinion of the court the defendant has the ability to pay such fee.

The requirement of this section for a presentence investigation or an LSI may be waived if both the state and the defendant agree to such a waiver and an LSI or a presentence investigation of the defendant has been conducted during the preceding three (3) years.

B. The presentence investigation report shall include a summary of the circumstances of the offense. This information shall include the voluntary statement of the victim concerning the offense and the amount of any loss of the victim. The presentence investigation reports shall include the criminal history of the offender. The criminal history shall list each prior adult felony conviction, each prior adult misdemeanor conviction, each prior juvenile adjudication, each prior sentence to probation, and each prior deferred or suspended sentence. The presentence investigation report shall also include the social history and present condition of the convicted person. Such reports must be presented to the judge so requesting, within a reasonable time, and upon the failure to so present the same, the judge may proceed with sentencing. Whenever, in the opinion of the court or the Department, it is desirable, the investigation shall include a physical and mental examination of the convicted person.

C. When a presentence investigation is conducted before imposing sentence, the court shall advise the defendant or his counsel and the district attorney of the factual contents and the conclusions and proposed findings of any presentence investigation or psychiatric examination and afford fair opportunity, if the defendant or the prosecution so requests, to controvert them. If either the defendant or the district attorney desires, such hearing shall be ordered by the court within a reasonable time providing either party an opportunity to offer evidence proving or disproving any proposed finding contained in such report.

SECTION 2. AMENDATORY Section 40, Chapter 133, O.S.L. 1997 (22 O.S. Supp. 1998, Section 987.2), as last amended by Section 25 of Enrolled Senate Bill No. 614 of the 1st Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 987.2 A. For purposes of the Oklahoma Community Sentencing Act:

1. "Local community sentencing system" means a partnership between the state and one or more county governments which uses public and private entities to deliver services to the sentencing court for punishment of eligible felony offenders under the authority of a community sentence;

2. "Community sentence" or "community punishment" means a punishment authorized by subsection F of Section 990 of this title imposed by the court as a condition of a deferred, suspended or delayed sentence of an eligible offender;

3. "Continuum of sanctions" means a variety of coercive measures and treatment options ranked by degrees of public safety, punitive effect, and cost benefit which are available to the sentencing judge as punishment for criminal conduct;

4. "Community sentencing system planning council" or "planning council" means a group of citizens and elected officials specified by law or appointed by the Chief Judge of the Judicial District

which plans the local community sentencing system and with the assistance of the Community Sentencing Division of the Department of Corrections locates treatment providers and resources to support the local community sentencing system;

5. "Incentive" means a court-ordered reduction in the terms or conditions of a community sentence which is given for exceptional performance or progress by the offender;

6. "Disciplinary sanction" means a court-ordered punishment in response to a technical or noncompliance violation of a community sentence which increases in intensity or duration with each successive violation;

7. "Division" means the Community Sentencing Division within the Department of Corrections which is the state administration agency for the Oklahoma Community Sentencing Act, the statewide community sentencing system, and all local community sentencing systems; and

8. "Eligible offender" means a felony offender who has been convicted to or entered a plea other than not guilty to a felony offense and who upon completion of a Level of Services Inventory or another assessment instrument has been found to be ~~above~~ in the moderate ~~and below the medium high-risk needs levels~~ range; and

9. "Statewide community sentencing system" means a network of all counties through their respective local community sentencing systems serving the state judicial system and offering support services to each other through reciprocal and interlocal agreements and interagency cooperation.

B. For the purposes of the Oklahoma ~~Intermediate Punishments~~ Community Sentencing Act, if a judicial district does not have a Chief Judge or if a judicial district has more than one Chief Judge, the duties of the Chief Judge provided for in the Oklahoma ~~Intermediate Punishments~~ Community Sentencing Act shall be performed by the Presiding Judge of the Judicial Administrative District.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Every person who has been charged, convicted, has pled guilty or has pled nolo contendere to any crime, hereinafter referred to as the defendant, or any other person with the cooperation of the defendant, who contracts to receive, or have any other person or entity receive, any proceeds or profits from any source, as a direct or indirect result of the crime or sentence, or the notoriety which the crime or sentence has conferred upon the defendant, shall forfeit the proceeds or profits as provided in this section; provided, however, proceeds or profits from a contract relating to the depiction or discussion of the defendant's crime shall not be subject to forfeiture unless an integral part of the work is a depiction or discussion of the defendant's crime or an impression of the defendant's thoughts, opinions, or emotions regarding the crime. All parties to a contract described in this section are required to pay to the district court wherein the criminal charges were filed any proceeds or thing of value which pursuant to the contract is to be paid to the defendant or to another person or entity. The district court shall make deposit of proceeds received pursuant to this section and direct the county treasurer to make the deposit of those funds in an escrow account for the benefit of and payable to victims of the crime or the legal representative of any victim of the crime committed by the defendant or to repay a public defender office for legal representation during a criminal proceeding. There is hereby created a lien upon any sum of money or other thing of value payable to anyone pursuant to any contract described in this section, for the purpose of enforcing the forfeiture obligation established herein, which lien may be foreclosed in the same manner as statutory tax liens created by Oklahoma law. Any person who contracts without fully providing for

such forfeiture in compliance with the provisions of this section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than Ten Thousand Dollars (\$10,000.00) and not to exceed three times the value of the proceeds of the contract, or by imprisonment not exceeding ten (10) years in the custody of the Department of Corrections, or both such fine and imprisonment.

B. Payments from the escrow account shall be used, in the following order of priority, to satisfy any judgment rendered in favor of a victim or a victim's legal representative, to pay restitution, fines, court costs, and other payments, reparations or reimbursements ordered by the court at the time of sentencing including repayments to a public defender office for legal representation of the defendant and to pay every cost and expense of incarceration and treatment authorized by law as a cost of the defendant.

C. A victim or the legal representative of a victim must file a civil action, in a court of competent jurisdiction, to recover money against the defendant or the defendant's legal representative within seven (7) years of the filing of the criminal charges against the defendant. The victims and the legal representative of a victim of the crime shall have a priority interest in any proceeds or profits received pursuant to the provisions of this section. If no victim or legal representative of a victim has filed a civil suit within seven (7) years from the filing of the criminal charges against the defendant, any money in the escrow account shall be paid over in the following order of priority:

1. For restitution;
2. For any fine and court costs;
3. For other payments ordered in the sentence;
4. For the costs and expenses of incarceration; and

any remaining money to the Victims' Compensation Revolving Fund.

Upon disposition of charges favorable to the defendant, any money in the escrow account shall be paid over to the defendant.

D. The district court wherein the criminal charges were filed shall, once every six (6) months for seven (7) years from the date any money is deposited with the court, publish a notice in at least one (1) newspaper of general circulation in each county of the state in accordance with the provisions on publication of notices found in Sections 101 et seq. of Title 25 of the Oklahoma Statutes, notifying any eligible victim or legal representative of an eligible victim that monies are available to satisfy judgments pursuant to this section.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 857.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

After hearing the charge, the jury may either decide in court, or may retire for deliberation. The jury shall determine whether the defendant is guilty or not guilty. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1110.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

Whoever, having been admitted to bail or released on recognizance, bond, or undertaking for appearance before any magistrate or court of the State of Oklahoma, incurs a forfeiture of the bail or violates such undertaking or recognizance and willfully fails to surrender himself within five (5) days following the date

of such forfeiture shall, if the bail was given or undertaking or recognizance extended in connection with a charge of felony or pending appeal or certiorari after conviction of any such offense, be guilty of a felony and shall be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned not more than one (1) year, or both. Nothing in this section shall be construed to interfere with or prevent the exercise by any court of its power to punish for contempt.

SECTION 6. This act shall become effective July 1, 1999.

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.

47-1-1803

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