

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1597

By: Wilkerson

AS INTRODUCED

An Act relating to the Oklahoma Community Sentencing Act; amending 22 O.S. 2001, Sections 988.7, 988.8, 988.9, 988.12, 988.16, 988.18 and 988.22, which relate to the Oklahoma Community Sentencing Act; modifying language; removing reciprocal agreements; modifying budget procedures; modifying designation of offender required to pay certain fee; removing funding priorities; removing requirement for review of certain budget by the Department of Corrections; removing requirement that the Department of Corrections provide medical treatment for certain offenders; deleting pilot projects; authorizing transfer of certain offenders to the Department of Corrections for medical treatment; 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. 2001, Section 988.7, is amended to read as follows:

Section 988.7 A. A detailed plan for each local community sentencing system seeking state funds shall be submitted each fiscal year to the Community Sentencing Division within the Department of Corrections pursuant to the rules promulgated for such purpose. The designated judge of the planning council shall review the range of services proposed in the plan and declare in writing whether the proposed services meet the needs of the court for purposes of sentencing pursuant to the authority of the Oklahoma Community Sentencing Act. The judge shall forward the plan to the Division for state review and appropriate funding. A plan that conforms with the purposes and goals of the Oklahoma Community Sentencing Act shall not be modified or disapproved except when the plan requires more funding than is available to the local system. Each local

community sentencing system plan shall include, but not be limited to, the following goals:

1. Identification of existing resources, including cash, professional services, in-kind resources, property, or other sources of resources;

2. Identification of additional resources needed, identified by type and amount;

3. Projected number of offenders to be served by each provider and the projected total number of offenders to be served by the local system;

4. Types and priority groups of offenders to be served for purposes of budgeting and targeting specific use of selected service providers;

5. Identification of sentencing practices used for disciplinary sanctions for noncriminal conduct against participating offenders and applicable costs;

6. Identification of local policy statements;

7. Methods for allocating resources to support the services included in the plan;

~~8. Identification and evaluation of reciprocal agreements for out-of-jurisdiction services or methods for complying with requests for reciprocal agreements;~~

~~9. Identification of program evaluation methods and results, and criteria or minimal program standards;~~

~~10.~~ Identification and evaluation of local record keeping and needs for audits or reviews;

~~11.~~ 9. Identification of any special administrative structure of the local system and list of specific service providers participating in the system, including detailed qualifications of staff and program administrators; and

~~12.~~ 10. Description and evaluation of the extent of community participation and support for the local system.

B. A community sentencing system shall be operational when the plan is accepted by the Community Sentencing Division or is receiving funding. The Division, upon receipt of a proposed local system plan for conformance with the purpose and goals of the Oklahoma Community Sentencing Act, shall have not more than forty-five (45) days to evaluate the plan and to notify the planning council of any recommended modification. ~~All modifications for budgeting purposes shall be completed by the first day of June of each year. Failure of the Division to request a budgetary modification within the times specified in this subsection shall constitute final approval of the plan for purposes of state funding and provider service agreements. The service agreements shall be finalized by June 30 of each year for each local community sentencing system.~~ The Division shall notify the chair of each local community sentencing system of its allocated budget by June 15. Based on the funding allocation, the local community sentencing system shall submit its budget to the Division prior to finalizing provider service agreements for the fiscal year. The Division shall not restrict by rule or practice the plan of any local system or determine what constitutes treatment or necessary services if the treatment or services comply with the purposes and goals of the Oklahoma Community Sentencing Act, unless there is a demonstrated deficiency or poor program evaluation.

C. A local administrator as provided in Section ~~13~~ 988.13 of this ~~act~~ title shall assist the local planning council in gathering and keeping accurate information about the jurisdiction to support the planning process. For the previous two (2) years, the information pertaining to the jurisdiction may include, but not be limited to:

1. The number and rate of arrests, number of felony convictions, admissions to probation, number of offenders sentenced to post-imprisonment supervision, number of offenders sentenced to

county jail, average length of sentence served in county jail, number of offenders sentenced to the custody of the Department of Corrections, and average length of sentence served in the custody of the Department of Corrections;

2. Current jail capacity, and jail population data by offender-type including, but not limited to, misdemeanor, felony, trusty, post-trial detainee, pretrial detainee, disciplinary sanction or juvenile;

3. A listing of services and programs available in the community, including costs, space availability, the number of offenders participating, the average length of participation and performance-based data;

4. Range of community punishments previously used by the courts for offenders within the jurisdiction, including methods and use of disciplinary sanctions for noncriminal behavior of offenders sentenced to community punishment and use of incentives;

5. A listing of educational, vocational-technical, health, mental health, substance abuse treatment, medical, and social services available to offenders or to be made available within a twelve-month period;

6. Restrictive residential facilities or other restrictive housing options available or to be made available within a twelve-month period; and

7. Approved local system plans and budgets.

SECTION 2. AMENDATORY 22 O.S. 2001, Section 988.8, is amended to read as follows:

Section 988.8 A. A community sentencing system established pursuant to the provisions of the Oklahoma Community Sentencing Act shall include those community punishments and programs and services enumerated and funded ~~as a pilot project~~ in the annual plan submitted to the Community Sentencing Division within the Department of Corrections and any other services or punishments subsequently

added and funded during a plan year. The options may not be utilized for offenders not meeting the eligibility criteria of programs and score requirements for the Level of Services Inventory (LSI) or other approved assessment. Each local system shall strive to have available to the court all of the following services for eligible offenders:

1. Community service with or without compensation to the offender;
2. Substance abuse treatment and availability for periodic drug testing ~~on~~ of offenders following treatment;
3. Varying levels of supervision by the Department of Corrections probation officers or another qualified supervision source;
4. Education and literacy provided by the State Department of Education, the county library system, the local school board, or another qualified source;
5. Employment opportunities and job skills training provided by the Oklahoma Department of Career and Technology Education or another qualified source;
6. Enforced collections provided by the local court clerk, or another state agency; and
7. The availability of county jail or another restrictive housing facility for limited disciplinary sanctions.

B. The court may order as a community punishment for an eligible offender any condition listed as a condition available for a suspended sentence.

C. In all cases in which an offender is sentenced to a community punishment, the offender shall be ordered as part of the terms and conditions of the sentence to pay for the court ordered sanction, based upon ability to pay. Payments may be as provided by court order or pursuant to periodic payment schedules established by the service provider. If the offender does not have the financial

ability to pay for the court ordered sanction, payment shall be made from funds budgeted for the local community sentencing system.

SECTION 3. AMENDATORY 22 O.S. 2001, Section 988.9, is amended to read as follows:

Section 988.9 A. Any offender sentenced to a community sentence pursuant to the Oklahoma Community Sentencing Act which requires supervision shall be required to pay a supervision fee. The supervising agency shall establish the fee amount, not to exceed Forty Dollars (\$40.00) per month, based upon the offender's ability to pay. In hardship cases the supervising agency may expressly waive all or part of the fee. No supervising agency participating in a local community sentencing system shall deny any offender supervision services for the sole reason that the offender is indigent. Fees collected for supervision services performed by the Department of Corrections shall be paid directly to the Department to be deposited in the Department of Corrections Revolving Fund. Supervision services performed by agencies other than the Department shall be paid directly to that agency.

B. In addition to any supervision fee, offenders scoring in the moderate range of the Level of Services Inventory (LSI) and participating in a local community sentencing system under a court-ordered community punishment shall be required to pay an administrative fee to support the local system which shall not exceed Twenty Dollars (\$20.00) per month to be set by the court. Administrative fees when collected shall be deposited with the Community Sentencing Division within the Department of Corrections and credited to the local community sentencing system for support and expansion of the local community corrections system. In the event the court fails to order the amount of the administrative fee, the fee shall be Twenty Dollars (\$20.00) per month.

C. In addition to any supervision fee and administrative fee authorized by this section, the court shall assess court costs, and

may assess program reimbursement costs, restitution, and fines to be paid by the offender. With the exception of supervision fees, other fees, costs, fines, restitution, or monetary obligations ordered to be paid by the offender shall not cease with the termination of active supervision and such obligations shall continue until fully paid and may be collected in the same manner as court costs.

SECTION 4. AMENDATORY 22 O.S. 2001, Section 988.12, is amended to read as follows:

Section 988.12 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 Oklahoma Community Sentencing Act shall be in community custody within the county.

B. Except as otherwise specifically provided by law, persons sentenced to a community punishment which does not include incarceration shall not have medical or dental expenses paid by the Department of Corrections or reimbursed by the Community Sentencing Division.

~~C. In jurisdictions where the local community sentencing system is receiving state funds, the local administrator may request the Community Sentencing Division within the Department of Corrections to provide emergency medical assistance to an individual offender when the medical emergency is related to a period of court-ordered confinement. When a request for emergency medical services is made, the Division shall consider necessary emergency medical assistance on a case-by-case basis.~~

~~D. In jurisdictions where the local community sentencing system is receiving state funds, any felony offender requiring extensive medical treatment or services relating to confinement, which is a~~

~~court ordered part of a community sentence, may be transferred to the Department of Corrections for appropriate medical 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 whichever occurs first.~~

E. In jurisdictions where the local community sentencing system is receiving state funds, the state will pay all required medical expenses while a person is incarcerated in the county jail ~~under~~ pursuant to a disciplinary sanction for a community punishment, provided the state has the obligation to pay for the term of incarceration pursuant to the provisions of the Oklahoma Community Sentencing Act. Any community sentenced offender confined pursuant to a disciplinary sanction who requires extensive medical treatment may be transferred to the Department of Corrections for appropriate medical treatment upon order of the court. The community sentenced offender shall be returned to the local system following the necessary medical treatment or upon completion of the term of the disciplinary sanction whichever occurs first.

SECTION 5. AMENDATORY 22 O.S. 2001, Section 988.16, is amended to read as follows:

Section 988.16 A. ~~The Department of Corrections shall implement pilot projects for establishment and continued operation of local community sentencing systems.~~

Each fiscal year the Division, in collaboration with the local planning councils, shall provide goals and funding priorities for community punishments as provided by law. The statewide community sentencing system shall be composed of local community sentencing system plans as approved by the Division. The Division shall promulgate rules for local community sentencing systems based upon objective criteria for allocation of state-appropriated funds to local systems for day-to-day operation during a fiscal year which may include identification of:

1. Fiscally responsible allocations of services and funds;
2. Innovative or effective programs of the local system; and
3. Appropriate targeting of offenders for services.

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. For a local community sentencing ~~pilot project~~ system to remain eligible for state funding, a local community sentencing system shall:

1. Demonstrate fiscal responsibility by operating the local system within the plan and budget allocation;
2. Require performance-based selection of service providers participating in the annual system plan;
3. Submit a plan which offers a continuum of sanctions for eligible offenders sentenced to the local community sentencing system and appropriately assign offenders for services; and
4. Comply with the rules promulgated by the Community Sentencing Division within the Department of Corrections and the provisions of the Oklahoma Community Sentencing Act.

~~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 988.7 of this title, and for compliance with law and rule.

~~E.~~ D. State funds from the Community Sentencing Division disbursed to 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.

~~F.~~ E. 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 557.1 of Title 57 of the Oklahoma Statutes, and shall be credited to the local jurisdiction making such deposit. The Community Sentencing Division within the Department of Corrections and every local planning council are 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 to support or expand the community sentencing system.

~~G. For purposes of calculating state funding for local community sentencing systems, supervision, treatment, and education shall be the first funding priorities.~~

SECTION 6. AMENDATORY 22 O.S. 2001, Section 998.18, is amended to read as follows:

Section 998.18 A. On and after March 1, 2000, for each felony offender considered for any community punishment pursuant to the Oklahoma Community Sentencing Act, the judge shall, prior to

sentencing, order an assessment and evaluation of the defendant as required by law.

B. The Level of Services Inventory (LSI), or another assessment and evaluation instrument designed to predict risk to recidivate approved by the Department of Corrections, shall be required to determine eligibility for any offender sentenced pursuant to the Oklahoma Community Sentencing Act. The completed assessment accompanied by a written supervision plan shall be presented to and reviewed by the court prior to determining any punishment for the offense. The purpose of the assessment shall be to identify the extent of the defendant's deficiencies and pro-social needs, the potential risk to commit additional offenses that threaten public safety, and the appropriateness of various community punishments.

C. Upon order of the court, the defendant shall be required to submit to the LSI or other approved assessment which shall be administered and scored by an appropriately trained person ~~designated by the court or~~ pursuant to a service agreement with the local community sentencing system. Any defendant lacking sufficient skills to comprehend or otherwise participate in the assessment and evaluation shall have appropriate assistance. If it is determined that the offender cannot be adequately evaluated using the LSI or another approved assessment, the offender shall be deemed ineligible for any community services pursuant to the Oklahoma Community Sentencing Act, and shall be sentenced as prescribed by law for the offense.

D. The willful failure or refusal of the defendant to be assessed and evaluated by using the LSI or another approved assessment shall preclude the defendant from eligibility for any community punishment.

E. The completed LSI, or other approved assessment, shall include a written supervision plan and identify an appropriate community punishment, if any, when the offender is considered

eligible for community punishments based upon the offender's completed risk/need score from the LSI assessment. Any offender scoring outside the moderate range on the LSI assessment shall not be eligible for any state funded community punishments.

F. The court is not required to sentence any offender to a community punishment regardless of an eligible score on the LSI. Any felony offender scoring in the low risk/need levels on the LSI may be sentenced to a suspended sentence with minimal, if any, conditions of the sentence to be paid by the offender. If the LSI or another assessment has been conducted, the evaluation report shall accompany the judgment and sentence.

SECTION 7. AMENDATORY 22 O.S. 2001, Section 998.22, is amended to read as follows:

Section 988.22 A. Any offender ordered to participate in the local community sentencing system shall be advised of the conditions of the specific program or service to which he or she is assigned.

~~B. Prior to completing a community punishment, the offender may, in special circumstances, request a reciprocal assignment in another jurisdiction to complete the terms and conditions of the community punishment. Each community sentencing system shall have entered into a reciprocal agreement for services with the other jurisdiction, and shall have the approval of the receiving jurisdiction and a court order from the court having jurisdiction of the offender before any transfer of the person, case, and services shall be made.~~

~~C.~~ Upon completion of any court-ordered provision, pursuant to the Oklahoma Community Sentencing Act, the administrator of the local system shall file a statement with the court defining the provision which has been successfully completed. When all court-ordered provisions have been successfully completed the defendant shall be deemed to have completed the community punishment.

~~D.~~ C. The provisions of the Oklahoma Community Sentencing Act shall not confer any rights upon the defendant to avoid a term of imprisonment prescribed by law for the offense, nor grant any additional rights to appeal for failure to be offered any specific punishment or treatment option available to the court.

~~E.~~ D. A community sentence pursuant to the Oklahoma Community Sentencing Act shall not require active supervision, programs or services for more than three (3) years, but may continue beyond the three-year limitation for purpose of completing court-ordered monetary obligations.

SECTION 8. This act shall become effective July 1, 2002.

SECTION 9. 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.

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