

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 789

By: Wilkerson

COMMITTEE SUBSTITUTE

[corrections - judicial review - modifying when
report is provided - directing certain treatment in
lieu of incarceration - effective date -

emergency]

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 982a, is
amended to read as follows:

Section 982a. A. Any time within twelve (12) months after a
sentence is imposed or within twelve (12) months after probation has
been revoked, the court imposing sentence or revocation of probation
may modify such sentence or revocation by directing that another
lesser penalty or treatment alternative be imposed, if the court is
satisfied that the best interests of the public will not be
jeopardized. ~~This section shall not apply to convicted felons who
have been in confinement in any state prison system for any previous
felony conviction during the ten-year period preceding the date that
the sentence this section applies to was imposed.~~

B. ~~The~~ Upon court order, the Department of Corrections shall
provide the court imposing sentence or revocation of probation with
the a ~~report by the Lexington Assessment and Reception Center and
any other information the Department can supply~~ on the inmate. The
court shall consider such reports when modifying the sentence or
modifying a revocation of probation.

C. If the court considers modification of the sentence or modification of a revocation of probation, a hearing shall be made in open court. The clerk of the court imposing sentence or revocation of probation shall give notice of the hearing ~~and provide a copy of the report by the Lexington Assessment and Reception Center~~ to the ~~inmate~~ Department of Corrections, the inmate's legal counsel and the district attorney of the county in which the inmate was convicted not less than ~~twenty-one (21)~~ fifteen (15) days prior to the hearing. The inmate shall not be required to be present at such hearing when incarcerated, but shall be represented by defense counsel. The Department shall provide a copy of the report on the inmate to the court, the inmate's legal counsel, and the district attorney at least five (5) days prior to the hearing.

D. If an appeal is taken which results in a modification of the sentence or modification of a revocation of probation of the defendant, such sentence may be further modified in the manner hereinbefore described within twelve (12) months after the receipt by the clerk of the district court of the mandate from the Supreme Court or the Court of Criminal Appeals.

E. Any person sentenced prior to the effective date of this act who is no longer eligible for judicial review due to having missed the twelve-month review period, shall be authorized to have a judicial review and modification of the sentence for purposes of treatment in lieu of incarceration as provided in paragraph 1 of subsection B of Section 612 of Title 57 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 57 O.S. 2001, Section 612, is amended to read as follows:

Section 612. A. Any person convicted of violating ~~the any of the provisions of Section 11-902 of Title 47 of the Oklahoma Statutes and sentenced to the custody of the Department of Corrections shall be processed through~~ relating to controlled dangerous substances, alcohol, low-point beer, or any intoxicating

substance shall be authorized to receive treatment in lieu of incarceration. The Department of Corrections shall determine whether the person is in need of substance abuse treatment and is amenable to treatment following reception at the Lexington Assessment and Reception Center or other location determined by the Director of the Department of Corrections. When a person is determined eligible for treatment, the Department shall cause the person to be classified and assigned as follows:

~~1. To the Department of Mental Health and Substance Abuse Services for substance abuse treatment, if the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk. The inmate may be required to reimburse the Department of Mental Health and Substance Abuse Services for all or part of the actual cost incurred for treatment of the inmate while the inmate is assigned to the Department of Mental Health and Substance Abuse Services. The Department of Corrections shall determine whether the inmate has the ability to pay for all or part of the cost of treatment. While assigned to a Department of Mental Health and Substance Abuse Services treatment program the inmate shall comply with the rules and regulations as agreed upon by the Department of Mental Health and Substance Abuse Services and the Department of Corrections of the treatment program. Any infraction of said the rules may result in the inmate's reassignment to a correctional facility of the Department of Corrections or escape charges being filed. Upon successful completion of the treatment program the inmate shall be properly reassigned by the Department of Corrections for the completion of the sentence imposed by the court. Prior to discharge from the treatment facility, the treatment facility shall forward to the Department of Corrections a report and discharge summary including arrangements and recommendations for further disposition and follow-up treatment;~~

~~2. To an inpatient substance abuse treatment program with the offender paying for the treatment. Upon successful completion of the inpatient treatment program, the offender may be assigned to a halfway house, structured community placement, or home placement with the advice of the treatment provider confinement. The Department of Corrections shall require as a condition of any community assignment that the offender have electronic monitoring, aftercare, supervision or ignition interlock device requirements, or both any combination of conditions as may be recommended by the treatment provider, as a condition of placement. The offender shall be responsible for all costs and fees associated with electronic monitoring, ignition interlock device, and supervision; or~~

~~3. To a correctional facility when:~~

- ~~a. the person is evaluated not to be receptive to treatment,~~
- ~~b. the person is evaluated to be a security risk, or~~
- ~~c. the person requires educational, medical or other services or programs not available in the community setting as determined by the Department.~~

B. The Department shall utilize one of the following procedures to assign offenders to treatment in lieu of incarceration:

1. The Department of Corrections, after receiving an eligible offender through the Lexington Assessment and Reception Center and determining the offender is both in need of substance abuse treatment and is receptive to treatment, shall notify the district attorney and the court to request a judicial review pursuant to Section 982a of Title 22 of the Oklahoma Statutes for the purpose of treatment in lieu of incarceration. The Department shall prepare and deliver a written treatment and placement plan to the court at the time of requesting a judicial review. The court shall review the plan and may modify the sentence pursuant to the authority of Section 982a of Title 22 of the Oklahoma Statutes by offering

treatment in lieu of incarceration under such conditions as deemed appropriate for community placement. Any person convicted and sentenced to the custody of the Department prior to the effective date of this act shall be eligible for a judicial review and sentence modification for substance abuse treatment under the provision of this section, notwithstanding any limitation to the time for a judicial review specified by law; provided, the Department notifies the district attorney and the court of its request for judicial review for such offenders on or before November 1, 2003; or

2. The Department of Corrections, after receiving an eligible offender through the Lexington Assessment and Reception Center and determining the offender is both in need of substance abuse treatment and is receptive to treatment, shall immediately assign and place the person into treatment within the community by housing such offender in a halfway house, community corrections center, hospital, structured housing facility, inpatient treatment facility, or in home confinement with such conditions as may be required to maintain supervision and treatment compliance. Following treatment, the person shall not be returned to any prison facility but shall remain in community confinement with aftercare, supervision, and other conditions until the conclusion of the sentence imposed.

C. As used in this section:

1. "Substance abuse treatment program" means a residential or outpatient program certified by the Department of Mental Health and Substance Abuse Services and ~~selected~~ approved by the Department of Corrections to provide substance abuse treatment for the inmate;

2. "Electronic monitoring" means monitoring of the inmate within a specified location or locations in a community setting by means of an electronic bracelet, global positioning device, or other device approved by the Department of Corrections; and

3. "Ignition interlock device" means a device that, without tampering or intervention by another person, would prevent the defendant from operating a motor vehicle if the defendant has a blood or breath alcohol concentration of five-hundredths (0.05) or greater.

SECTION 3. This act shall become effective July 1, 2003.

SECTION 4. 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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