

CS for SB 789

THE STATE SENATE  
Tuesday, February 25, 2003

Committee Substitute for  
Senate Bill No. 789

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 789 - By: WILKERSON of the Senate and BRADDOCK of the House.

[ 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 A. Any time within twelve (12) months after a sentence is imposed or within twelve (12) months after probation has been revoked, the court imposing sentence or revocation of probation may modify such sentence or revocation by directing that another lesser penalty or treatment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~~

1 ~~any other information the Department can supply~~ on the inmate. The  
2 court shall consider such reports when modifying the sentence or  
3 modifying a revocation of probation.

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

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

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

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

9 Section 612. A. Any person convicted of violating ~~the~~ any of  
10 the provisions of Section 11-902 of Title 47 of the Oklahoma  
11 Statutes and sentenced to the custody of the Department of  
12 Corrections shall be processed through relating to controlled  
13 dangerous substances, alcohol, low-point beer, or any intoxicating  
14 substance shall be authorized to receive treatment in lieu of  
15 incarceration. The Department of Corrections shall determine  
16 whether the person is in need of substance abuse treatment and is  
17 amenable to treatment following reception at the Lexington  
18 Assessment and Reception Center or other location determined by the  
19 Director of the Department of Corrections7. When a person is  
20 determined eligible for treatment, the Department shall cause the  
21 person to be classified and assigned as follows:

22 1. To the Department of Mental Health and Substance Abuse  
23 Services for substance abuse treatment, if the person is evaluated

1 ~~to be receptive to treatment and not deemed by the Department of~~  
2 ~~Corrections to be a security risk.~~ The inmate may be required to  
3 reimburse the ~~Department of Mental Health and Substance Abuse~~  
4 ~~Services~~ for all or part of the actual cost incurred for treatment  
5 of the inmate while the inmate is assigned to the Department of  
6 ~~Mental Health and Substance Abuse Services.~~ The Department of  
7 Corrections shall determine whether the inmate has the ability to  
8 pay for all or part of the cost of treatment. While assigned to a  
9 ~~Department of Mental Health and Substance Abuse Services~~ treatment  
10 program the inmate shall comply with the rules ~~and regulations as~~  
11 ~~agreed upon by the Department of Mental Health and Substance Abuse~~  
12 ~~Services and the Department of Corrections~~ of the treatment program.  
13 Any infraction of ~~said~~ the rules may result in the inmate's  
14 reassignment to a correctional facility ~~of the Department of~~  
15 ~~Corrections~~ or escape charges being filed. Upon successful  
16 completion of the treatment program the inmate shall be ~~properly~~  
17 ~~reassigned by the Department of Corrections for the completion of~~  
18 ~~the sentence imposed by the court.~~ Prior to discharge from the  
19 ~~treatment facility,~~ the treatment facility shall forward to the  
20 ~~Department of Corrections a report and discharge summary including~~  
21 ~~arrangements and recommendations for further disposition and follow-~~  
22 ~~up treatment;~~

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

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

14           ~~a. the person is evaluated not to be receptive to~~  
15           ~~treatment,~~

16           ~~b. the person is evaluated to be a security risk, or~~

17           ~~c. the person requires educational, medical or other~~  
18           ~~services or programs not available in the community~~  
19           ~~setting as determined by the Department.~~

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

22       1. The Department of Corrections, after receiving an eligible  
23 offender through the Lexington Assessment and Reception Center and

1 determining the offender is both in need of substance abuse  
2 treatment and is receptive to treatment, shall notify the district  
3 attorney and the court to request a judicial review pursuant to  
4 Section 982a of Title 22 of the Oklahoma Statutes for the purpose of  
5 treatment in lieu of incarceration. The Department shall prepare  
6 and deliver a written treatment and placement plan to the court at  
7 the time of requesting a judicial review. The court shall review  
8 the plan and may modify the sentence pursuant to the authority of  
9 Section 982a of Title 22 of the Oklahoma Statutes by offering  
10 treatment in lieu of incarceration under such conditions as deemed  
11 appropriate for community placement. Any person convicted and  
12 sentenced to the custody of the Department prior to the effective  
13 date of this act shall be eligible for a judicial review and  
14 sentence modification for substance abuse treatment under the  
15 provision of this section, notwithstanding any limitation to the  
16 time for a judicial review specified by law; provided, the  
17 Department notifies the district attorney and the court of its  
18 request for judicial review for such offenders on or before November  
19 1, 2003; or

20 2. The Department of Corrections, after receiving an eligible  
21 offender through the Lexington Assessment and Reception Center and  
22 determining the offender is both in need of substance abuse  
23 treatment and is receptive to treatment, shall immediately assign

1 and place the person into treatment within the community by housing  
2 such offender in a halfway house, community corrections center,  
3 hospital, structured housing facility, inpatient treatment facility,  
4 or in home confinement with such conditions as may be required to  
5 maintain supervision and treatment compliance. Following treatment,  
6 the person shall not be returned to any prison facility but shall  
7 remain in community confinement with aftercare, supervision, and  
8 other conditions until the conclusion of the sentence imposed.

9 C. As used in this section:

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

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

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

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

1           SECTION 4. It being immediately necessary for the preservation  
2 of the public peace, health and safety, an emergency is hereby  
3 declared to exist, by reason whereof this act shall take effect and  
4 be in full force from and after its passage and approval.

5 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-19-03 - DO  
6 PASS, As Amended and Coauthored.