

THE HOUSE OF REPRESENTATIVES
Tuesday, February 19, 2008

House Bill No. 2694

HOUSE BILL NO. 2694 - By: ROAN of the House and CORN of the Senate.

An Act relating to criminal procedure; amending 22 O.S. 2001, Section 988.8, as amended by Section 2, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2007, Section 988.8), which relates to the Oklahoma Community Sentencing Act; authorizing stay of certain actions relating to driving privileges; prohibiting use of stay under certain circumstances; requiring proof of insurance prior to entering certain order; amending 22 O.S. 2001, Section 991a-4.1, which relates to the Community Service Sentencing Program; modifying scope of certain definition; modifying statutory references; and providing an effective date.

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

1 SECTION 1. AMENDATORY 22 O.S. 2001, Section 988.8, as amended by
2 Section 2, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2007, Section 988.8), is amended to
3 read as follows:
4 Section 988.8 A. A community sentencing system established pursuant to the
5 provisions of the Oklahoma Community Sentencing Act shall include those community
6 punishments and programs and services enumerated and funded in the annual plan
7 submitted to the Community Sentencing Division within the Department of Corrections
8 and any other services or punishments subsequently added and funded during a plan
9 year. The options may not be utilized for offenders not meeting the eligibility criteria of
10 programs and score requirements for the Level of Services Inventory (LSI) or other

1 approved assessment. Each local system shall strive to have available to the court all of
2 the following services for eligible offenders:

3 1. Community service with or without compensation to the offender;

4 2. Substance abuse treatment and availability for periodic drug testing of offenders
5 following treatment;

6 3. Varying levels of supervision by the Department of Corrections probation officers
7 or another qualified supervision source;

8 4. Education and literacy provided by the State Department of Education, the
9 county library system, the local school board, or another qualified source;

10 5. Employment opportunities and job skills training provided by the Oklahoma
11 Department of Career and Technology Education or another qualified source;

12 6. Enforced collections provided by the local court clerk, or another state agency;
13 and

14 7. The availability of county jail or another restrictive housing facility for limited
15 disciplinary sanctions.

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

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

1 sanction, payment shall be made from funds budgeted for the local community
2 sentencing system.

3 D. Notwithstanding any other provision of law, if the driving privileges of the
4 offender have been suspended, revoked, cancelled or denied by the Department of Public
5 Safety and if the court determines that no other means of transportation for the offender
6 is available, the court may enter a written order requiring the Department of Public
7 Safety to stay any and all such actions against the Class D driving privileges of the
8 offender; provided, the stay shall not be construed to grant driving privileges to an
9 offender who has not been issued a driver license by the Department or whose Oklahoma
10 driver license has expired, in which case the offender shall be required to apply for and
11 be found eligible for a driver license, pass all examinations, if applicable, and pay all
12 statutory driver license issuance or renewal fees. The offender shall provide proof of
13 insurance to the court prior to the court ordering a stay of any driver license suspension,
14 revocation, cancellation or denial.

15 SECTION 2. AMENDATORY 22 O.S. 2001, Section 991a-4.1, is amended to
16 read as follows:

17 Section 991a-4.1 A. There is hereby re-created the “Community Service Sentencing
18 Program”. ~~This program is a continuation of the program established in 1988 by Section~~
19 ~~991a-4 of Title 22 of the Oklahoma Statutes.~~ The purpose of the program shall be to
20 provide an alternative to incarceration for nonviolent felony offenders who would
21 normally be sentenced to incarceration in a state institution.

1 B. Any eligible offender may be sentenced, at the discretion of the judge, to a
2 Community Service Sentencing Program pursuant to the provisions of this section. For
3 purposes of this section, “eligible offender” shall mean any person who:

4 1. Is not participating in the Delayed Sentencing Program for Young Adults
5 pursuant to the provisions of Sections 996 through 996.3 of ~~Title 22 of the Oklahoma~~
6 ~~Statutes~~ this title;

7 ~~2. Has not previously been convicted of two or more felonies;~~

8 ~~3.~~ 3. Has been convicted of a nonviolent felony offense which shall be defined as any
9 felony offense except assault and battery with a dangerous weapon, aggravated assault
10 and battery on a law officer, poisoning with intent to kill, shooting with intent to kill,
11 assault with intent to kill, assault with intent to commit a felony, murder in the first
12 degree, murder in the second degree, manslaughter in the first degree, manslaughter in
13 the second degree, kidnapping, burglary in the first degree, kidnapping for extortion,
14 maiming, robbery, child beating, wiring any equipment, vehicle, or structure with
15 explosives, forcible sodomy, rape in the first degree or rape by instrumentation, lewd or
16 indecent proposition or lewd or indecent act with a child under sixteen (16) years of age,
17 use of a firearm or offensive weapon to commit or attempt to commit a felony, pointing
18 firearms, rioting or arson in the first degree;

19 ~~4.~~ 3. Has properly completed and executed all necessary documents; and

20 ~~5.~~ 4. Is not otherwise ineligible by law or court rule.

21 C. The Department of Corrections shall administer the Program, except in counties
22 with a population of five hundred fifty thousand (550,000) or more persons that operate

1 an existing program. The Department shall conduct a presentence investigation
2 pursuant to the provisions of Section 982 of ~~Title 22 of the Oklahoma Statutes~~ this title if
3 the court determines the offender is to be assigned to the Program. As part of such
4 presentence investigation, the Department shall interview the offender and advise the
5 offender of the requirements and conditions of the Program. The Department shall
6 recommend an assignment of the offender to any one or combination of the following
7 areas:

- 8 1. Community service, with or without compensation;
- 9 2. Education, vocational-technical education or literacy programs;
- 10 3. Substance abuse treatment programs;
- 11 4. Periodic testing for the presence of controlled substances;
- 12 5. Psychological counseling or psychiatric treatment;
- 13 6. Medical treatment;
- 14 7. Restitution, to be paid either to the victim of the offense or to the Crime Victims
15 Compensation Revolving Fund created pursuant to the provisions of Section 142.17 of
16 Title 21 of the Oklahoma Statutes;
- 17 8. Confinement in a county jail for a period not to exceed one (1) year, night or
18 weekend incarceration pursuant to the provisions of Section 991a-2 of ~~Title 22 of the~~
19 ~~Oklahoma Statutes~~ this title or incarceration by the Department of Corrections;
20 provided, the Department of Corrections shall reimburse a county which does not receive
21 payments from any other source for the cost of the necessary expenses of such persons
22 during periods of such incarceration in an amount not to exceed Twenty Dollars (\$20.00)

1 per day and any county receiving such payments in an amount not to exceed Ten Dollars
2 (\$10.00) per day. The Department shall reimburse the county for the actual cost paid for
3 any emergency medical care for physical injury or illness of such persons if the county is
4 required by law to provide such care for inmates in the jail. The reimbursements
5 provided by this section shall not exceed the cost that would have accrued to the state for
6 the feeding, care or medical care of the persons had they been incarcerated with the
7 Department. Except as otherwise provided by law, all provisions of the Oklahoma
8 Corrections Act of 1967, ~~Section 501 et seq. of Title 57 of the Oklahoma Statutes,~~ shall
9 apply to such persons, including but not limited to any provisions requiring payment by
10 such persons of the costs of incarceration; or

11 9. Probation or conditional probation.

12 D. In counties with a population of five hundred fifty thousand (550,000) or more
13 persons that operate an existing program, the Department of Corrections is hereby
14 authorized to reimburse the county sheriff, pursuant to paragraph 8 of subsection C of
15 this section, the cost of necessary expenses for confinement in the county jail for any
16 eligible offender as defined in subsection B of this section. Such reimbursement shall be
17 subject to appropriation by the Legislature. The Department may promulgate rules and
18 procedures for submitting claims for reimbursements.

19 E. The judge shall consider the criminal history of the offender, the nature of the
20 offender's criminal conduct, the employment and family history of the offender and any
21 other factors the judge deems relevant when sentencing persons to the Program.

22 Following the presentence investigations and recommendation, the judge shall impose

1 sentence. The judge may accept the recommendation, with or without modifications
2 thereto, or may reject the recommendation and impose any sentence allowed by law.

3 F. The provisions of Sections 20, 58.3, 138, 138.1 and 224 of Title 57 of the
4 Oklahoma Statutes and Section 615 of Title 69 of the Oklahoma Statutes and any other
5 provisions of law relating to earned credits for certain acts or service shall not apply to
6 persons participating in the Program. The judge may establish a schedule of earned
7 credits as part of the sentence.

8 G. The Department shall establish a list of federal, state and local government
9 agencies, community service agencies, nonprofit organizations, educational programs and
10 other treatment programs willing to participate in the program to which offenders may
11 be referred. The Department shall periodically contact agencies, organizations and
12 programs to which offenders are assigned to determine if offenders have reported and
13 performed satisfactorily. Any such agency or program shall immediately notify the
14 Department if an offender fails to fulfill any requirement of the Program. The
15 Department or the sentencing judge may require additional documentation of the
16 offender's work performance.

17 H. The Department shall ensure that the sentencing judge and prosecuting
18 attorney are notified in writing when an offender has successfully completed the
19 assigned community service hours or other requirements of the Program or has failed to
20 complete the requirements and provide any other relevant information required by the
21 sentencing judge or prosecuting attorney.

1 I. All state and local government agencies, community service agencies, nonprofit
2 organizations, educational programs and other treatment programs participating in the
3 Program are hereby immune from liability for any offender participating in the Program
4 under the Workers' Compensation Act, ~~Section 1 et seq. of Title 85 of the Oklahoma~~
5 ~~Statutes~~, and for torts committed by or against any offender participating in the Program
6 to the extent specified in Sections 227 and 228 of Title 57 of the Oklahoma Statutes.

7 J. Any offender participating in the Program shall be advised of the provisions of
8 this section and shall, in writing, acknowledge that the offender has been advised of and
9 understands the provisions of the Program.

10 SECTION 3. This act shall become effective November 1, 2008.

11 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,
12 dated 02-18-08 - DO PASS, As Coauthored.