SB 402

THE STATE SENATE
Monday, February 26, 2007

Senate Bill No. 402

As Amended

SENATE BILL NO. 402 - By: CRAIN of the Senate and McDANIEL (Jeannie) of the House.

An Act relating to community sentencing; amending 22 O.S. 2001, Sections 988.2, as amended by Section 1, Chapter 251, O.S.L. 2004, 988.16, as amended by Section 5, Chapter 165, O.S.L. 2002, 988.18, as amended by Section 6, Chapter 165, O.S.L. 2002, and 988.22, as amended by Section 7, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2006, Sections 988.2, 988.9, 988.16, 988.18, and 988.22), which relate to definitions, supervision fee, funding, assessment, and assignment to program; deleting certain prohibition to eligibility; modifying reference; providing certain exception to eligible LSI score; changing supervision period; allowing extension of supervision period for certain purpose; providing for maximum term of supervision; 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 988.2, as amended by Section 1, Chapter 251, O.S.L. 2004 (22 O.S. Supp. 2006, Section 988.2), is amended to read as follows:

Section 988.2 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

(Bold face denotes Committee Amendments)

court for punishment of eligible felony offenders under the authority of a community sentence;

2. "Community sentence" or "community punishment" means a punishment imposed by the court as a condition of a deferred or suspended sentence for 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;

8. “Eligible offender” means a felony offender who has been convicted of or who has 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 in the moderate range and who is not otherwise prohibited by law; provided, however, that no person who has been convicted of or who has entered a plea other than not guilty to an offense enumerated in subsection 5 of Section 571 of Title 57 of the Oklahoma Statutes, as an exception to the definition of “nonviolent offense” shall be eligible for a community sentence or community punishment unless the district attorney or an assistant district attorney for the district in which the offender’s conviction was obtained consents thereto. The district attorney may consent to eligibility for an offender who has a mental illness or a developmental disability or a co-occurring mental illness and substance abuse disorder and who scores outside the moderate range on the LSI or another assessment instrument if the offender is not otherwise prohibited by law. Any consent by a district attorney shall be made a part of the record of the case~~.~~

~~Provided, further, that no person who has been convicted of or who has entered a plea other than not guilty to a felony enumerated in Section 13.1 of Title 21 of the Oklahoma Statutes shall be eligible for a community sentence or community punishment~~; 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 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 Community Sentencing Act shall be performed by the Presiding Judge of the Judicial Administrative District.

SECTION **2.** AMENDATORY 22 O.S. 2001, Section 988.16, as amended by Section 5, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2006, Section 988.16), is amended to read as follows:

Section 988.16 A. 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 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. 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.

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.

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~~ 557.2 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.

SECTION **3.** AMENDATORY 22 O.S. 2001, Section 988.18, as amended by Section 6, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2006, Section 988.18), is amended to read as follows:

Section 988.18 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 <u>of the</u>

defendant, 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 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, unless the offender has a mental health exception.

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 **4.** AMENDATORY 22 O.S. 2001, Section 988.22, as amended by Section 7, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2006, Section 988.22), 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. 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.

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.

D. A community sentence pursuant to the Oklahoma Community Sentencing Act, as a condition of a deferred judgment, shall not require active supervision, programs or services for more than ~~three (3)~~ two (2) years~~, but~~. However, upon **recommendation** by the Community Sentencing Division that the best interests of the public would be served, **the court may order** supervision and services for a suspended sentence **to** be extended for a period not to exceed one (1) year. A community sentence may continue beyond the ~~three-year~~ limitation period for active supervision and services, but shall not exceed the expiration of the maximum term, for purpose of completing court-ordered monetary obligations.

SECTION **5.** This act shall become effective July 1, 2007.

SECTION **6.** 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.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-20-07 - DO PASS, As Amended and Coauthored.