

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1059

By: McDaniel (Jeannie)

4  
5  
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22  
8 O.S. 2001, Sections 988.2, as amended by Section 1,  
9 Chapter 251, O.S.L. 2004, 988.9, as amended by  
10 Section 3, Chapter 165, O.S.L. 2002, 988.16, as  
11 amended by Section 5, Chapter 165, O.S.L. 2002,  
12 988.18, as amended by Section 6, Chapter 165, O.S.L.  
13 2002, 988.20 and 988.22, as amended by Section 7,  
14 Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2006,  
15 Sections 988.2, 988.9, 988.16, 988.18 and 988.22),  
16 which relate to the Oklahoma Community Sentencing  
17 Act; modifying scope of certain definition; exempting  
18 use of certain fees from state purchasing laws;  
19 updating statutory reference; providing an exception  
20 to eligibility requirements for community punishment;  
21 adding statutory reference; decreasing time  
22 limitation for certain community sentences;  
23 authorizing extension of time limitation under  
24 certain circumstances; authorizing continuation of  
supervision and services under certain circumstances;  
prohibiting continuation of supervision and services  
for certain purpose; and providing an effective date.

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:

1 Section 988.2 A. For purposes of the Oklahoma Community  
2 Sentencing Act:

3 1. "Local community sentencing system" means a partnership  
4 between the state and one or more county governments which uses  
5 public and private entities to deliver services to the sentencing  
6 court for punishment of eligible felony offenders under the  
7 authority of a community sentence;

8 2. "Community sentence" or "community punishment" means a  
9 punishment imposed by the court as a condition of a deferred or  
10 suspended sentence for an eligible offender;

11 3. "Continuum of sanctions" means a variety of coercive  
12 measures and treatment options ranked by degrees of public safety,  
13 punitive effect, and cost benefit which are available to the  
14 sentencing judge as punishment for criminal conduct;

15 4. "Community sentencing system planning council" or "planning  
16 council" means a group of citizens and elected officials specified  
17 by law or appointed by the Chief Judge of the Judicial District  
18 which plans the local community sentencing system and with the  
19 assistance of the Community Sentencing Division of the Department of  
20 Corrections locates treatment providers and resources to support the  
21 local community sentencing system;

22 5. "Incentive" means a court-ordered reduction in the terms or  
23 conditions of a community sentence which is given for exceptional  
24 performance or progress by the offender;

1       6. "Disciplinary sanction" means a court-ordered punishment in  
2 response to a technical or noncompliance violation of a community  
3 sentence which increases in intensity or duration with each  
4 successive violation;

5       7. "Division" means the Community Sentencing Division within  
6 the Department of Corrections which is the state administration  
7 agency for the Oklahoma Community Sentencing Act, the statewide  
8 community sentencing system, and all local community sentencing  
9 systems;

10       8. "Eligible offender" means a felony offender who has been  
11 convicted of or who has entered a plea other than not guilty to a  
12 felony offense and who upon completion of a Level of Services  
13 Inventory or another assessment instrument has been found to be in  
14 the moderate or high range and who is not otherwise prohibited by  
15 law; provided, however, that no person who has been convicted of or  
16 who has entered a plea other than not guilty to an offense  
17 enumerated in ~~subsection 5~~ paragraph 2 of Section 571 of Title 57 of  
18 the Oklahoma Statutes, as an exception to the definition of  
19 "nonviolent offense" shall be eligible for a community sentence or  
20 community punishment unless the district attorney or an assistant  
21 district attorney for the district in which the ~~offender's~~  
22 conviction of the offender was obtained consents thereto. The  
23 district attorney may consent to eligibility for an offender who has  
24 a mental illness or a developmental disability or a co-occurring

1 mental illness and substance abuse disorder and who scores outside  
2 the moderate range on the LSI or another assessment instrument if  
3 the offender is not otherwise prohibited by law. Any consent by a  
4 district attorney shall be made a part of the record of the case.  
5 ~~Provided, further, that no person who has been convicted of or who~~  
6 ~~has entered a plea other than not guilty to a felony enumerated in~~  
7 ~~Section 13.1 of Title 21 of the Oklahoma Statutes shall be eligible~~  
8 ~~for a community sentence or community punishment; and~~

9 9. "Statewide community sentencing system" means a network of  
10 all counties through their respective local community sentencing  
11 systems serving the state judicial system and offering support  
12 services to each other through reciprocal and interlocal agreements  
13 and interagency cooperation.

14 B. For the purposes of the Oklahoma Community Sentencing Act,  
15 if a judicial district does not have a Chief Judge or if a judicial  
16 district has more than one Chief Judge, the duties of the Chief  
17 Judge provided for in the Oklahoma Community Sentencing Act shall be  
18 performed by the Presiding Judge of the Judicial Administrative  
19 District.

20 SECTION 2. AMENDATORY 22 O.S. 2001, Section 988.9, as  
21 amended by Section 3, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2006,  
22 Section 988.9), is amended to read as follows:

23 Section 988.9 A. Any offender sentenced to a community  
24 sentence pursuant to the Oklahoma Community Sentencing Act which

1 requires supervision shall be required to pay a supervision fee.  
2 The supervising agency shall establish the fee amount, not to exceed  
3 Forty Dollars (\$40.00) per month, based upon the ~~offender's~~ ability  
4 of the offender to pay. In hardship cases the supervising agency  
5 may expressly waive all or part of the fee. No supervising agency  
6 participating in a local community sentencing system shall deny any  
7 offender supervision services for the sole reason that the offender  
8 is indigent. Fees collected for supervision services performed by  
9 the Department of Corrections shall be paid directly to the  
10 Department to be deposited in the Department of Corrections  
11 Revolving Fund. Supervision services performed by agencies other  
12 than the Department shall be paid directly to that agency.

13 B. In addition to any supervision fee, offenders scoring in the  
14 moderate or high range of the Level of Services Inventory (LSI) and  
15 participating in a local community sentencing system under a court-  
16 ordered community punishment shall be required to pay an  
17 administrative fee to support the local system which shall not  
18 exceed Twenty Dollars (\$20.00) per month to be set by the court.  
19 Administrative fees when collected shall be deposited with the  
20 Community Sentencing Division within the Department of Corrections  
21 and credited to the local community sentencing system for support  
22 and expansion of the local community corrections system. The use of  
23 administrative fees by the local community sentencing system shall  
24 not be subject to state purchasing laws. In the event the court

1 fails to order the amount of the administrative fee, the fee shall  
2 be Twenty Dollars (\$20.00) per month.

3 C. In addition to any supervision fee and administrative fee  
4 authorized by this section, the court shall assess court costs, and  
5 may assess program reimbursement costs, restitution, and fines to be  
6 paid by the offender. With the exception of supervision fees, other  
7 fees, costs, fines, restitution, or monetary obligations ordered to  
8 be paid by the offender shall not cease with the termination of  
9 active supervision and such obligations shall continue until fully  
10 paid and may be collected in the same manner as court costs.

11 SECTION 3. AMENDATORY 22 O.S. 2001, Section 988.16, as  
12 amended by Section 5, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2006,  
13 Section 988.16), is amended to read as follows:

14 Section 988.16 A. Each fiscal year the Division, in  
15 collaboration with the local planning councils, shall provide goals  
16 and funding priorities for community punishments as provided by law.  
17 The statewide community sentencing system shall be composed of local  
18 community sentencing system plans as approved by the Division. The  
19 Division shall promulgate rules for local community sentencing  
20 systems based upon objective criteria for allocation of state-  
21 appropriated funds to local systems for day-to-day operation during  
22 a fiscal year which may include identification of:

- 23 1. Fiscally responsible allocations of services and funds;
- 24 2. Innovative or effective programs of the local system; and

1           3. Appropriate targeting of offenders for services.

2 The Division and each of the local community sentencing systems are  
3 required to operate within the appropriated funds. The state shall  
4 require each local community sentencing system to identify resources  
5 other than state funds as part of the funding formula. The Division  
6 shall establish procedures for disbursement of state funds to  
7 service providers, and shall disburse state funds in a timely  
8 manner.

9           B. For a local community sentencing system to remain eligible  
10 for state funding, a local community sentencing system shall:

11           1. Demonstrate fiscal responsibility by operating the local  
12 system within the plan and budget allocation;

13           2. Require performance-based selection of service providers  
14 participating in the annual system plan;

15           3. Submit a plan which offers a continuum of sanctions for  
16 eligible offenders sentenced to the local community sentencing  
17 system and appropriately assign offenders for services; and

18           4. Comply with the rules promulgated by the Community  
19 Sentencing Division within the Department of Corrections and the  
20 provisions of the Oklahoma Community Sentencing Act.

21           C. When state funding is required to implement a local  
22 community sentencing system plan, the Community Sentencing Division  
23 shall approve the plan only to the extent that the jurisdiction's  
24 share of the total state appropriations will support the

1 implementation of the local system plan. Modification to a local  
2 plan shall be for budgetary purposes, as provided in Section 988.7  
3 of this title, and for compliance with law and rule.

4 D. State funds from the Community Sentencing Division disbursed  
5 to community sentencing systems shall be used for operation and  
6 administrative expenses and shall not be used to construct,  
7 renovate, remodel, expand or improve any jail, residential treatment  
8 facility, restrictive housing facility, or any other structure, nor  
9 shall these funds be used to replace funding or other resources from  
10 the federal, state, county or city government committed in support  
11 of the detailed system plan during the plan year.

12 E. Any funds accruing to the benefit of a community sentencing  
13 system shall be deposited in the Oklahoma Community Sentencing  
14 Revolving Fund created as provided in Section ~~557.1~~ 557.2 of Title  
15 57 of the Oklahoma Statutes, and shall be credited to the local  
16 jurisdiction making such deposit. The Community Sentencing Division  
17 within the Department of Corrections and every local planning  
18 council are authorized to apply for and accept grants, gifts,  
19 bequests and other lawful money from nonprofit private  
20 organizations, for-profit organizations, political subdivisions of  
21 this state, the United States, and private citizens to support or  
22 expand the community sentencing system.

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1 SECTION 4. AMENDATORY 22 O.S. 2001, Section 988.18, as  
2 amended by Section 6, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2006,  
3 Section 988.18), is amended to read as follows:

4 Section 988.18 A. On and after March 1, 2000, for each felony  
5 offender considered for any community punishment pursuant to the  
6 Oklahoma Community Sentencing Act, the judge shall, prior to  
7 sentencing, order an assessment and evaluation of the defendant as  
8 required by law.

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

21 C. Upon order of the court, the defendant shall be required to  
22 submit to the LSI or other approved assessment which shall be  
23 administered and scored by an appropriately trained person pursuant  
24 to a service agreement with the local community sentencing system.

1 Any defendant lacking sufficient skills to comprehend or otherwise  
2 participate in the assessment and evaluation shall have appropriate  
3 assistance. If it is determined that the offender cannot be  
4 adequately evaluated using the LSI or another approved assessment,  
5 the offender shall be deemed ineligible for any community services  
6 pursuant to the Oklahoma Community Sentencing Act, and shall be  
7 sentenced as prescribed by law for the offense.

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

12 E. The completed LSI, or other approved assessment, shall  
13 include a written supervision plan and identify an appropriate  
14 community punishment, if any, when the offender is considered  
15 eligible for community punishments based upon the ~~offender's~~  
16 completed risk/need score from the LSI assessment of the offender.  
17 Any offender scoring outside the moderate or high range on the LSI  
18 assessment shall not be eligible for any state funded community  
19 punishments, unless the offender has a mental health exception.

20 F. The court is not required to sentence any offender to a  
21 community punishment regardless of an eligible score on the LSI.  
22 Any felony offender scoring in the low risk/need levels on the LSI  
23 may be sentenced to a suspended sentence with minimal, if any,  
24 conditions of the sentence to be paid by the offender. If the LSI

1 or another assessment has been conducted, the evaluation report  
2 shall accompany the judgment and sentence.

3 SECTION 5. AMENDATORY 22 O.S. 2001, Section 988.20, is  
4 amended to read as follows:

5 Section 988.20 A. Upon proper motion to the court to modify a  
6 community sentence as provided in Section 988.19 of this title, the  
7 judge shall have authority to impose disciplinary sanctions or  
8 incentives. An order for a disciplinary sanction shall not modify  
9 the terms of the original sentence and shall be imposed only to gain  
10 compliance with the terms of the court-ordered community punishment.  
11 The court may order any community punishment available and funded in  
12 the jurisdiction that is deemed appropriate by the judge for the  
13 circumstance including, but not limited to, a term of imprisonment  
14 not to exceed thirty (30) days per disciplinary order in either:

- 15 1. The county jail;
- 16 2. A residential treatment facility;
- 17 3. A restrictive housing facility; or
- 18 4. A halfway house.

19 When the offender is to be confined, the sheriff shall, upon order  
20 of the court, deliver the offender to the designated place of  
21 confinement, provided the place of confinement has an agreement for  
22 confinement services with the local community sentencing system or  
23 is the county jail. The sheriff shall be reimbursed by the local  
24 community sentencing system for transporting offenders pursuant to

1 this subsection. The offender shall be given day-for-day credit for  
2 any terms of incarceration served in the county jail or other  
3 restrictive facility when the sentence is modified.

4 B. The court may, through a standing court order, provide for  
5 specific disciplinary sanctions and incentives which may be utilized  
6 by the local administrator upon notification to the court.

7 C. When a motion for modification has been filed pursuant to  
8 Section 988.19 of this title, the court shall have authority to  
9 offer incentives to offenders to encourage proper conduct in the  
10 community and for compliance with the community punishments. The  
11 court shall use its discretion in ordering appropriate incentives.  
12 Incentives shall be considered a reduction and modification to the  
13 community punishment and may be ordered after the motion to modify  
14 has been heard.

15 D. When any offender is disciplined by the court as authorized  
16 by this section and is to be imprisoned in the county jail or other  
17 restrictive facility, the sheriff or facility administrator shall  
18 receive compensation as provided by their agreement with the local  
19 community sentencing system, or the sheriff or facility  
20 administrator shall be paid directly for the services by the  
21 offender when ordered to pay for the confinement as part of the  
22 disciplinary sanction. In no event shall any compensation for  
23 disciplinary confinement exceed the maximum amount provided for  
24

1 county jail confinement in ~~Section~~ Sections 38.1 and 38.2 of Title  
2 57 of the Oklahoma Statutes.

3 E. The Department of Corrections is prohibited from accepting  
4 offenders into any state penitentiary for disciplinary sanctions.

5 SECTION 6. AMENDATORY 22 O.S. 2001, Section 988.22, as  
6 amended by Section 7, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2006,  
7 Section 988.22), is amended to read as follows:

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

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

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

22 D. ~~A~~ As a condition of a deferred or suspended sentence, a  
23 community sentence pursuant to the Oklahoma Community Sentencing Act  
24 shall not require active supervision, programs or services for more

1 than ~~three (3)~~ two (2) years, ~~but~~. However, upon determination by  
2 the Community Sentencing Division that the best interests of the  
3 public would be served, supervision and services for a suspended  
4 sentence may be extended for a period not to exceed one (1) year. A  
5 community sentence may only continue beyond the ~~three-year~~  
6 limitation period for active supervision and services, but shall not  
7 exceed the expiration of the maximum term, for purpose of completing  
8 court-ordered monetary obligations.

9 SECTION 7. This act shall become effective November 1, 2007.

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11 51-1-6225 GRS 12/27/06

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