

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 2694

By: Roan

4
5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2001, Section 988.8, as amended by Section 2,
9 Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2007, Section
10 988.8), which relates to the Oklahoma Community
11 Sentencing Act; authorizing stay of certain actions
12 relating to driving privileges; prohibiting use of
13 stay under certain circumstances; requiring proof of
14 insurance prior to entering certain order; amending
15 22 O.S. 2001, Section 991a-4.1, which relates to the
16 Community Service Sentencing Program; modifying scope
17 of certain definition; modifying statutory
18 references; and providing an effective date.

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

20 SECTION 1. AMENDATORY 22 O.S. 2001, Section 988.8, as
21 amended by Section 2, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2007,
22 Section 988.8), is amended to read as follows:

23 Section 988.8 A. A community sentencing system established
24 pursuant to the provisions of the Oklahoma Community Sentencing Act
shall include those community punishments and programs and services
enumerated and funded in the annual plan submitted to the Community
Sentencing Division within the Department of Corrections and any
other services or punishments subsequently added and funded during a

1 plan year. The options may not be utilized for offenders not
2 meeting the eligibility criteria of programs and score requirements
3 for the Level of Services Inventory (LSI) or other approved
4 assessment. Each local system shall strive to have available to the
5 court all of the following services for eligible offenders:

- 6 1. Community service with or without compensation to the
7 offender;
- 8 2. Substance abuse treatment and availability for periodic drug
9 testing of offenders following treatment;
- 10 3. Varying levels of supervision by the Department of
11 Corrections probation officers or another qualified supervision
12 source;
- 13 4. Education and literacy provided by the State Department of
14 Education, the county library system, the local school board, or
15 another qualified source;
- 16 5. Employment opportunities and job skills training provided by
17 the Oklahoma Department of Career and Technology Education or
18 another qualified source;
- 19 6. Enforced collections provided by the local court clerk, or
20 another state agency; and
- 21 7. The availability of county jail or another restrictive
22 housing facility for limited disciplinary sanctions.

23
24

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

4 C. In all cases in which an offender is sentenced to a
5 community punishment, the offender shall be ordered as part of the
6 terms and conditions of the sentence to pay for the court ordered
7 sanction, based upon ability to pay. Payments may be as provided by
8 court order or pursuant to periodic payment schedules established by
9 the service provider. If the offender does not have the financial
10 ability to pay for the court ordered sanction, payment shall be made
11 from funds budgeted for the local community sentencing system.

12 D. Notwithstanding any other provision of law, if the driving
13 privileges of the offender have been suspended, revoked, cancelled
14 or denied by the Department of Public Safety and if the court
15 determines that no other means of transportation for the offender is
16 available, the court may enter a written order requiring the
17 Department of Public Safety to stay any and all such actions against
18 the Class D driving privileges of the offender; provided, the stay
19 shall not be construed to grant driving privileges to an offender
20 who has not been issued a driver license by the Department or whose
21 Oklahoma driver license has expired, in which case the offender
22 shall be required to apply for and be found eligible for a driver
23 license, pass all examinations, if applicable, and pay all statutory
24 driver license issuance or renewal fees. The offender shall provide

1 proof of insurance to the court prior to the court ordering a stay
2 of any driver license suspension, revocation, cancellation or
3 denial.

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

6 Section 991a-4.1 A. There is hereby re-created the "Community
7 Service Sentencing Program". ~~This program is a continuation of the~~
8 ~~program established in 1988 by Section 991a-4 of Title 22 of the~~
9 ~~Oklahoma Statutes.~~ The purpose of the program shall be to provide
10 an alternative to incarceration for nonviolent felony offenders who
11 would normally be sentenced to incarceration in a state institution.

12 B. Any eligible offender may be sentenced, at the discretion of
13 the judge, to a Community Service Sentencing Program pursuant to the
14 provisions of this section. For purposes of this section, "eligible
15 offender" shall mean any person who:

16 1. Is not participating in the Delayed Sentencing Program for
17 Young Adults pursuant to the provisions of Sections 996 through
18 996.3 of ~~Title 22 of the Oklahoma Statutes~~ this title;

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

20 3. Has been convicted of a nonviolent felony offense which
21 shall be defined as any felony offense except assault and battery
22 with a dangerous weapon, aggravated assault and battery on a law
23 officer, poisoning with intent to kill, shooting with intent to
24 kill, assault with intent to kill, assault with intent to commit a

1 felony, murder in the first degree, murder in the second degree,
2 manslaughter in the first degree, manslaughter in the second degree,
3 kidnapping, burglary in the first degree, kidnapping for extortion,
4 maiming, robbery, child beating, wiring any equipment, vehicle, or
5 structure with explosives, forcible sodomy, rape in the first degree
6 or rape by instrumentation, lewd or indecent proposition or lewd or
7 indecent act with a child under sixteen (16) years of age, use of a
8 firearm or offensive weapon to commit or attempt to commit a felony,
9 pointing firearms, rioting or arson in the first degree;

10 ~~4.~~ 3. Has properly completed and executed all necessary
11 documents; and

12 ~~5.~~ 4. Is not otherwise ineligible by law or court rule.

13 C. The Department of Corrections shall administer the Program,
14 except in counties with a population of five hundred fifty thousand
15 (550,000) or more persons that operate an existing program. The
16 Department shall conduct a presentence investigation pursuant to the
17 provisions of Section 982 of ~~Title 22 of the Oklahoma Statutes~~ this
18 title if the court determines the offender is to be assigned to the
19 Program. As part of such presentence investigation, the Department
20 shall interview the offender and advise the offender of the
21 requirements and conditions of the Program. The Department shall
22 recommend an assignment of the offender to any one or combination of
23 the following areas:

24 1. Community service, with or without compensation;

- 1 2. Education, vocational-technical education or literacy
- 2 programs;
- 3 3. Substance abuse treatment programs;
- 4 4. Periodic testing for the presence of controlled substances;
- 5 5. Psychological counseling or psychiatric treatment;
- 6 6. Medical treatment;
- 7 7. Restitution, to be paid either to the victim of the offense
- 8 or to the Crime Victims Compensation Revolving Fund created pursuant
- 9 to the provisions of Section 142.17 of Title 21 of the Oklahoma
- 10 Statutes;
- 11 8. Confinement in a county jail for a period not to exceed one
- 12 (1) year, night or weekend incarceration pursuant to the provisions
- 13 of Section 991a-2 of ~~Title 22 of the Oklahoma Statutes~~ this title or
- 14 incarceration by the Department of Corrections; provided, the
- 15 Department of Corrections shall reimburse a county which does not
- 16 receive payments from any other source for the cost of the necessary
- 17 expenses of such persons during periods of such incarceration in an
- 18 amount not to exceed Twenty Dollars (\$20.00) per day and any county
- 19 receiving such payments in an amount not to exceed Ten Dollars
- 20 (\$10.00) per day. The Department shall reimburse the county for the
- 21 actual cost paid for any emergency medical care for physical injury
- 22 or illness of such persons if the county is required by law to
- 23 provide such care for inmates in the jail. The reimbursements
- 24 provided by this section shall not exceed the cost that would have

1 accrued to the state for the feeding, care or medical care of the
2 persons had they been incarcerated with the Department. Except as
3 otherwise provided by law, all provisions of the Oklahoma
4 Corrections Act of 1967, ~~Section 501 et seq. of Title 57 of the~~
5 ~~Oklahoma Statutes,~~ shall apply to such persons, including but not
6 limited to any provisions requiring payment by such persons of the
7 costs of incarceration; or

8 9. Probation or conditional probation.

9 D. In counties with a population of five hundred fifty thousand
10 (550,000) or more persons that operate an existing program, the
11 Department of Corrections is hereby authorized to reimburse the
12 county sheriff, pursuant to paragraph 8 of subsection C of this
13 section, the cost of necessary expenses for confinement in the
14 county jail for any eligible offender as defined in subsection B of
15 this section. Such reimbursement shall be subject to appropriation
16 by the Legislature. The Department may promulgate rules and
17 procedures for submitting claims for reimbursements.

18 E. The judge shall consider the criminal history of the
19 offender, the nature of the offender's criminal conduct, the
20 employment and family history of the offender and any other factors
21 the judge deems relevant when sentencing persons to the Program.
22 Following the presentence investigations and recommendation, the
23 judge shall impose sentence. The judge may accept the
24

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

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

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

20 H. The Department shall ensure that the sentencing judge and
21 prosecuting attorney are notified in writing when an offender has
22 successfully completed the assigned community service hours or other
23 requirements of the Program or has failed to complete the
24

1 requirements and provide any other relevant information required by
2 the sentencing judge or prosecuting attorney.

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

11 J. Any offender participating in the Program shall be advised
12 of the provisions of this section and shall, in writing, acknowledge
13 that the offender has been advised of and understands the provisions
14 of the Program.

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

16
17 51-2-8718 GRS 12/13/07

18
19
20
21
22
23
24