

1 STATE OF OKLAHOMA

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

3 SENATE BILL 402

By: Crain

4  
5  
6 AS INTRODUCED

7 An Act relating to community sentencing; 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, and 988.22, as amended by Section 7, Chapter  
14 165, O.S.L. 2002 (22 O.S. Supp. 2006, Sections 988.2,  
15 988.9, 988.16, 988.18, and 988.22), which relate to  
16 definitions, supervision fee, funding, assessment,  
17 and assignment to program; deleting certain  
18 prohibition to eligibility; making use of certain  
19 fees not subject to state purchasing laws; modifying  
20 reference; providing certain exception to eligible  
21 LSI score; changing supervision period; allowing  
22 extension of supervision period for certain purpose;  
23 providing for maximum term of supervision; providing  
24 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           1. "Local community sentencing system" means a partnership  
2 between the state and one or more county governments which uses  
3 public and private entities to deliver services to the sentencing  
4 court for punishment of eligible felony offenders under the  
5 authority of a community sentence;

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

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

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

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

23           6. "Disciplinary sanction" means a court-ordered punishment in  
24 response to a technical or noncompliance violation of a community

1 sentence which increases in intensity or duration with each  
2 successive violation;

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

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

1 district attorney shall be made a part of the record of the case-  
2 ~~Provided, further, that no person who has been convicted of or who~~  
3 ~~has entered a plea other than not guilty to a felony enumerated in~~  
4 ~~Section 13.1 of Title 21 of the Oklahoma Statutes shall be eligible~~  
5 ~~for a community sentence or community punishment; and~~

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

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

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

20 Section 988.9 A. Any offender sentenced to a community  
21 sentence pursuant to the Oklahoma Community Sentencing Act which  
22 requires supervision shall be required to pay a supervision fee.  
23 The supervising agency shall establish the fee amount, not to exceed  
24 Forty Dollars (\$40.00) per month, based upon the offender's ability

1 to pay. In hardship cases the supervising agency may expressly  
2 waive all or part of the fee. No supervising agency participating  
3 in a local community sentencing system shall deny any offender  
4 supervision services for the sole reason that the offender is  
5 indigent. Fees collected for supervision services performed by the  
6 Department of Corrections shall be paid directly to the Department  
7 to be deposited in the Department of Corrections Revolving Fund.  
8 Supervision services performed by agencies other than the Department  
9 shall be paid directly to that agency.

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

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

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

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

- 21 1. Fiscally responsible allocations of services and funds;
- 22 2. Innovative or effective programs of the local system; and
- 23 3. Appropriate targeting of offenders for services.

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

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

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

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

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

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

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

1 plan shall be for budgetary purposes, as provided in Section 988.7  
2 of this title, and for compliance with law and rule.

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

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

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

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

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

18 C. Upon order of the court, the defendant shall be required to  
19 submit to the LSI or other approved assessment which shall be  
20 administered and scored by an appropriately trained person pursuant  
21 to a service agreement with the local community sentencing system.  
22 Any defendant lacking sufficient skills to comprehend or otherwise  
23 participate in the assessment and evaluation shall have appropriate  
24 assistance. If it is determined that the offender cannot be

1 adequately evaluated using the LSI or another approved assessment,  
2 the offender shall be deemed ineligible for any community services  
3 pursuant to the Oklahoma Community Sentencing Act, and shall be  
4 sentenced as prescribed by law for the offense.

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

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

17 F. The court is not required to sentence any offender to a  
18 community punishment regardless of an eligible score on the LSI.  
19 Any felony offender scoring in the low risk/need levels on the LSI  
20 may be sentenced to a suspended sentence with minimal, if any,  
21 conditions of the sentence to be paid by the offender. If the LSI  
22 or another assessment has been conducted, the evaluation report  
23 shall accompany the judgment and sentence.

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

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

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

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

18 D. A community sentence pursuant to the Oklahoma Community  
19 Sentencing Act, as a condition of a deferred judgment, shall not  
20 require active supervision, programs or services for more than ~~three~~  
21 ~~(3)~~ (2) years, but. However, upon determination by the  
22 Community Sentencing Division that the best interests of the public  
23 would be served, supervision and services for a suspended sentence  
24 may be extended for a period not to exceed one (1) year. A

1 community sentence may continue beyond the ~~three-year~~ limitation  
2 period for active supervision and services, but shall not exceed the  
3 expiration of the maximum term, for purpose of completing court-  
4 ordered monetary obligations.

5 SECTION 6. This act shall become effective July 1, 2007.

6 SECTION 7. It being immediately necessary for the preservation  
7 of the public peace, health and safety, an emergency is hereby  
8 declared to exist, by reason whereof this act shall take effect and  
9 be in full force from and after its passage and approval.

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