

THE HOUSE OF REPRESENTATIVES
Monday, February 23, 2009

House Bill No. 1887

HOUSE BILL NO. 1887 - By: RICHARDSON AND KIESEL of the House and GUMM of the Senate.

An Act relating to criminal procedure; amending 22 O.S. 2001, Sections 988.2, as amended by Section 1, Chapter 251, O.S.L. 2004, 988.9, as amended by Section 3, Chapter 165, O.S.L. 2002, 988.16, as amended by Section 5, Chapter 165, O.S.L. 2002 and 988.18, as amended by Section 6, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2008, Sections 988.2, 988.9, 988.16 and 988.18), which relate to the Oklahoma Community Sentencing Act; modifying definition of eligible offender; requiring certain offenders to pay administrative fee; modifying certain statutory reference; prohibiting certain persons from being eligible for community punishments; providing an exception; 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 988.2, as amended by
2 Section 1, Chapter 251, O.S.L. 2004 (22 O.S. Supp. 2008, Section 988.2), is amended to
3 read as follows:

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

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

1 2. “Community sentence” or “community punishment” means a punishment
2 imposed by the court as a condition of a deferred or suspended sentence for an eligible
3 offender;

4 3. “Continuum of sanctions” means a variety of coercive measures and treatment
5 options ranked by degrees of public safety, punitive effect, and cost benefit which are
6 available to the sentencing judge as punishment for criminal conduct;

7 4. “Community sentencing system planning council” or “planning council” means a
8 group of citizens and elected officials specified by law or appointed by the Chief Judge of
9 the Judicial District which plans the local community sentencing system and with the
10 assistance of the Community Sentencing Division of the Department of Corrections
11 locates treatment providers and resources to support the local community sentencing
12 system;

13 5. “Incentive” means a court-ordered reduction in the terms or conditions of a
14 community sentence which is given for exceptional performance or progress by the
15 offender;

16 6. “Disciplinary sanction” means a court-ordered punishment in response to a
17 technical or noncompliance violation of a community sentence which increases in
18 intensity or duration with each successive violation;

19 7. “Division” means the Community Sentencing Division within the Department of
20 Corrections which is the state administration agency for the Oklahoma Community
21 Sentencing Act, the statewide community sentencing system, and all local community
22 sentencing systems;

1 8. “Eligible offender” means a felony offender who has been convicted of or who has
2 entered a plea other than not guilty to a felony offense and who upon completion of a
3 Level of Services Inventory or another assessment instrument has been found to be in
4 the moderate or high range and who is not otherwise prohibited by law; provided,
5 however, that no person who has been convicted of or who has entered a plea other than
6 not guilty to an offense enumerated in ~~subsection 5~~ paragraph 2 of Section 571 of Title 57
7 of the Oklahoma Statutes, as an exception to the definition of “nonviolent offense” shall
8 be eligible for a community sentence or community punishment unless the district
9 attorney or an assistant district attorney for the district in which the ~~offender’s~~
10 conviction of the offender was obtained consents thereto. The district attorney may
11 consent to eligibility for an offender who has a mental illness or a developmental
12 disability or a co-occurring mental illness and substance abuse disorder and who scores
13 outside the moderate or high range on the LSI or another assessment instrument if the
14 offender is not otherwise prohibited by law. Any consent by a district attorney shall be
15 made a part of the record of the case. ~~Provided, further, that no person who has been~~
16 ~~convicted of or who has entered a plea other than not guilty to a felony enumerated in~~
17 ~~Section 13.1 of Title 21 of the Oklahoma Statutes shall be eligible for a community~~
18 ~~sentence or community punishment; and~~

19 9. “Statewide community sentencing system” means a network of all counties
20 through their respective local community sentencing systems serving the state judicial
21 system and offering support services to each other through reciprocal and interlocal
22 agreements and interagency cooperation.

1 B. For the purposes of the Oklahoma Community Sentencing Act, if a judicial
2 district does not have a Chief Judge or if a judicial district has more than one Chief
3 Judge, the duties of the Chief Judge provided for in the Oklahoma Community
4 Sentencing Act shall be performed by the Presiding Judge of the Judicial Administrative
5 District.

6 SECTION 2. AMENDATORY 22 O.S. 2001, Section 988.9, as amended by
7 Section 3, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2008, Section 988.9), is amended to
8 read as follows:

9 Section 988.9 A. Any offender sentenced to a community sentence pursuant to the
10 Oklahoma Community Sentencing Act which requires supervision shall be required to
11 pay a supervision fee. The supervising agency shall establish the fee amount, not to
12 exceed Forty Dollars (\$40.00) per month, based upon the offender's ability to pay. In
13 hardship cases the supervising agency may expressly waive all or part of the fee. No
14 supervising agency participating in a local community sentencing system shall deny any
15 offender supervision services for the sole reason that the offender is indigent. Fees
16 collected for supervision services performed by the Department of Corrections shall be
17 paid directly to the Department to be deposited in the Department of Corrections
18 Revolving Fund. Supervision services performed by agencies other than the Department
19 shall be paid directly to that agency.

20 B. In addition to any supervision fee, offenders scoring in the moderate or high
21 range of the Level of Services Inventory (LSI) and participating in a local community
22 sentencing system under a court-ordered community punishment shall be required to

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 pay an administrative fee to support the local system which shall not exceed Twenty
2 Dollars (\$20.00) per month to be set by the court. Administrative fees when collected
3 shall be deposited with the Community Sentencing Division within the Department of
4 Corrections and credited to the local community sentencing system for support and
5 expansion of the local community corrections system. In the event the court fails to order
6 the amount of the administrative fee, the fee shall be Twenty Dollars (\$20.00) per month.

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

13 SECTION 3. AMENDATORY 22 O.S. 2001, Section 988.16, as amended by
14 Section 5, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2008, Section 988.16), is amended to
15 read as follows:

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

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

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

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

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

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

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

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

21 C. When state funding is required to implement a local community sentencing
22 system plan, the Community Sentencing Division shall approve the plan only to the

1 extent that the jurisdiction's share of the total state appropriations will support the
2 implementation of the local system plan. Modification to a local plan shall be for
3 budgetary purposes, as provided in Section 988.7 of this title, and for compliance with
4 law and rule.

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

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

19 SECTION 4. AMENDATORY 22 O.S. 2001, Section 988.18, as amended by
20 Section 6, Chapter 165, O.S.L. 2002 (22 O.S. Supp. 2008, Section 988.18), is amended to
21 read as follows:

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

14 C. Upon order of the court, the defendant shall be required to submit to the LSI or
15 other approved assessment which shall be administered and scored by an appropriately
16 trained person pursuant to a service agreement with the local community sentencing
17 system. Any defendant lacking sufficient skills to comprehend or otherwise participate
18 in the assessment and evaluation shall have appropriate assistance. If it is determined
19 that the offender cannot be adequately evaluated using the LSI or another approved
20 assessment, the offender shall be deemed ineligible for any community services pursuant
21 to the Oklahoma Community Sentencing Act, and shall be sentenced as prescribed by
22 law for the offense.

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

4 E. The completed LSI, or other approved assessment, shall include a written
5 supervision plan and identify an appropriate community punishment, if any, when the
6 offender is considered eligible for community punishments based upon the offender's
7 completed ~~risk/need~~ risk and need score from the LSI assessment of the offender. Any
8 offender scoring outside the moderate or high range on the LSI assessment shall not be
9 eligible for any state funded community punishments unless the district attorney has
10 consented to eligibility for an offender who has a mental illness or developmental
11 disability or a co-occurring mental illness and substance abuse disorder.

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

18 SECTION 5. This act shall become effective November 1, 2009.

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-19-09 - DO PASS,
20 As Coauthored.