

# **Community Sentencing**



# **BENCH**



**For Oklahoma  
District Court Judges**

**FIRST EDITION**  
**April 18, 2001**

# *Community Sentencing Bench Book*

## **Table of Contents**

	Page
Acknowledgements	1
I. Introduction	2
II. Purpose; Definitions; Status of Offender	3
A. Purpose	3
B. Definitions and Glossary of Terms	4
C. Status of the Offender—Community Custody	7
III. Evaluation of Eligible Offenders	8
A. Eligible Offenders	8
1. Definition	8
2. Found guilty or entered plea	8
3. Must be eligible for probation	8
a. Deferred Sentence	8
b. Suspended Sentence	8
4. Level of Services Inventory (LSI) Assessment required	9
5. LSI cannot be waived	9
6. Adult Substance Abuse Survey (ASUS)	10
7. Presentence Investigation (PSI) Report	10
8. Assessments required	10
9. Community Sentence not mandatory	11
10. Ineligibility	11
B. Optional Eligibility for Offenders	12
1. “Eleven Deadly Sins” as bar to eligibility	12
2. Exceptions to eligibility bar	12
3. Violent offenses as bar to eligibility	13
C. Crimes Not Eligible for Community Sentence	15
D. Misdemeanors and Felony Offenses—Combination Sentencing Procedure	16
IV. Court Procedures	17
A. Court Orders Assessments	17
1. Order LSI	17
2. May order LSI before or after plea	17
3. May order ASUS	17
4. May order PSI	17
B. Imposition of Deferred or Suspended Sentence	18
C. Order Community Sentence as Condition of Sentence	18
1. Discretion to order rules and conditions of sentence	18

a.	Sentencing powers of court	18
b.	Services provided to court	18
D.	Notice – Rules and Conditions of Community Sentence	18
E.	Imposition of Community Sentence not Mandatory	18
1.	Even if guidelines are met	18
2.	No additional appeal rights	18
F.	Judicial Discretion and Sentencing Guidelines	19
1.	Restitution	19
2.	Deferred or Suspended Sentence	19
3.	Must meet eligibility requirements	19
4.	Services available by local system	19
G.	Supervising Authority	19
H.	Offender Payment of Services	19
1.	Installment payments	20
2.	Inability to pay	20
I.	Cost Effectiveness of Sentencing	20
1.	Most cost effective treatment required	20
2.	Awareness of correctional resources	20
J.	Acceptance of Plea Litany	21
K.	Sentencing For Community Sentence Litany	25
1.	Suspended Sentence	25
2.	Deferred Sentence	27
3.	Notice of right of appeal	29
V.	Required Assessments For Eligibility Determination	30
A.	Level of Service Inventory (LSI) Assessment	30
1.	Generally	30
2.	Purpose	30
3.	Composition of LSI	31
4.	Rationale	31
5.	LSI Scoring	32
a.	Risk Score	32
b.	Needs Score	32
c.	Protective Factor Score	32
6.	Administering the LSI	33
a.	Trained personnel	33
b.	Offender lacking skills to test	33
c.	Re-assessment	33
B.	Adult Substance Use Survey (ASUS)	33
1.	Definition	33
2.	Evaluator review	33
3.	ASUS scoring	33
C.	Supervision and Intervention Report (SIR)	34

VI.	Supervision of Offenders	35
	A. Initiated by the Court Order	35
	B. May Not Exceed Three Years	35
	C. Supervision Providers	35
	D. Levels of Supervision	35
	E. Transfer of Supervision	36
	F. Immunity	36
VII.	Violations of Community Sentencing Rules and Conditions	37
	A. Reporting Violations to Court	37
	B. Modification or Termination	37
	C. Minor and Intermediate Violations-Standing Order	37
	D. Court to Determine Punishment or Appropriate Conditions	38
	E. Sanctions	38
	1. Generally	38
	2. Definitions	38
	3. Purpose	38
	4. Standing order	38
	5. Sanctions available	39
	F. Incentives	40
VIII.	Modification of Sentence	41
	A. Motion to Modify	41
	B. Must be Presented to Sentencing Court	41
	C. Procedure for Modification	41
	1. Properly filed motion	41
	2. Accompanying reports required	41
	3. Reason for motion must be stated	42
	4. Court must consider submitted information prior to modification	41
	5. If considered, must be a hearing	42
	6. Court must enter an appropriate order	42
	D. Modification Options	42
	1. Imposition of punishment allowed by law	42
	2. Disciplinary sanctions	42
	3. Incentives	42
	4. Cannot exceed punishment allowed by law	43
	5. No limit for number of modifications	43
	6. Penalty for frivolous motions	43
IX.	Revocation or Acceleration of Sentence	44
	A. Court May Revoke or Accelerate Sentence	44
	B. Revocation or Acceleration Cannot Be Done By Modification Procedure	44
	C. Failure to Pay Restitution Consequence	44

X.	Sentencing Options and Services Available to the Court	45
	A. Services Available	45
	B. Suspended Sentences	45
	C. Deferred Sentences	47
XI.	Reciprocity Between Jurisdictions	48
	A. Transfer of Supervision to Jurisdiction with Community Sentencing	48
	B. Transfer of Supervision to Jurisdiction without Community Sentencing	48
XII.	Fee Structure/Payment Procedures	49
	A. Court-Ordered Offender Payment	49
	B. Supervision Fee	49
	C. Administrative Fee	50
	D. Additional Costs Assessed by the Court	50
	E. Medical Expenses	50
	F. Continuation of Financial Obligation	51
XIII.	Sentence Completion Procedure	52
	A. Maximum of Three Years	52
	B. Monetary Obligations Do Not Terminate Until Paid in Full	52
	C. Procedures For Completion	52
	D. Community Sentence Completion Consequence	52
	1. Deferred sentence	52
	2. Suspended sentence	53
XIV.	Local Administration	54
	A. Local Administrator Determines Placements	54
	B. Duties of Local Administrator	54
XV.	Communication and Record-Keeping	56
XVI.	References	
	A. Administrative Rules	
	B. System Map	
	C. Planning Council Membership	
	D. Active Judges by Judicial Districts	
	E. Resource Directory	

## Acknowledgements

The *Community Sentencing Bench Book* was commissioned by the Community Sentencing Division of the Oklahoma Department of Corrections.

The *Bench Book* was written and prepared in the spring of 2001 by Vickie Brandt, a third year law student, at the University of Tulsa in collaboration with District Judge Linda G. Morrissey. This effort arose from her service as a judicial intern for Judge Morrissey, who was Chairperson of the *Bench Book* Committee for the Judicial Subcommittee of the Tulsa County Criminal Justice Planning and Policy Council.

Invaluable suggestions and guidance were also provided by the following individuals: Judge Jefferson Sellers, Chairman of the Tulsa County Community Sentencing Pilot Project; Presiding Judge David Peterson, Judge Tom Gillert, Judge J. Michael Gassett, Judge Jesse Harris, Judge Todd Singer, Judge Bruce Sewell (Wagoner County); Judge J. Dwayne Steidley (Rogers County); Ann Domin, Tulsa Court Administrator; Sally Howe Smith, Tulsa County Court Clerk; Tim Harris, Tulsa County District Attorney; Jim Brandon and David Iski and Bret Sanders, Assistant District Attorneys; Pete Silva, Tulsa County Public Defender; Rob Ridenour, Assistant Public Defender; Robert Ravitz, Oklahoma County Public Defender, Kevin Francis, Tulsa County Court Services; Ron Ricketts, attorney with Gable and Gotwals, and John Athens. The following officials with the Department of Corrections provided valuable assistance as well: Bob Boston, Local Administrator; Justin Jones, Deputy Director, Probation & Parole/Community Sentencing Division; George Lindley, Assistant Deputy Director, Community Sentencing, Bill Yeager and Sharon Neumann, Regional Directors of Community Sentencing. Appreciation is also extended to Kathryn Cherry, Bailiff for Judge Linda Morrissey, who provided technical assistance and Karmel Davis, Judicial Intern for Judge Morrissey.

## I. Introduction

The *Community Sentencing Bench Book* is designed to be a speedy, practical resource for utilizing the Oklahoma Community Sentencing Act. At the most basic level, the intent of the *Bench Book* is to serve as a user-friendly guide through the community sentencing process. The *Bench Book* is organized by topic, and in the chronological order of the sentencing procedure— beginning with the determination of eligibility, and concluding with the completion of a community sentence by the offender.

This is not a comprehensive authority, but rather a resource from which one can seek immediate direction as questions arise. Most of the information is presented in an outline format with the appropriate statute(s) cited immediately following each point. In addition, the most current authority and statutes appear as appendixes in the back of the *Bench Book* for easy reference.

The loose-leaf format is designed to accommodate revisions as enacted by the legislature, and to allow users to customize the book with both their own unique information, and the specialized guidelines developed by their Local Community Sentencing Council. It is intended that the *Bench Book* may also be made available to other parties who have an interest or stake in Community Sentencing in Oklahoma. In addition to judges, this may include district attorneys, public defenders, attorneys and the Department of Corrections. Provisions have also been made for inclusion of local community sentence service providers, and the organizational chart of both the local and state community sentencing administrative authorities.

## II. Purpose; Definitions; Status of Offender

A. The purpose of the Oklahoma Community Sentencing Act is to:

Protect the public;

Establish a statewide community sentencing system;

Adequately supervise felony offenders punished under a Court-ordered community sentence;

Provide a continuum of sanctions to the Court for eligible offenders sentenced to a community sentence within the community sentencing system;

Increase the availability of punishment and treatment options to eligible felony offenders;

Improve the criminal justice system within Oklahoma through public/private partnerships, reciprocal and inter-local governmental agreements, and interagency cooperation and collaboration; and

Operate effectively within the allocation of state and local resources for the Oklahoma criminal justice system.

22 O.S. Supp. 2000 § 988.3.

## B. Definitions and Glossary of Terms

1. "ASUS" or the Adult Substance Use Survey is a self-evaluation process used by the offender regarding alcohol and drug use.
2. "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 Court for punishment of eligible felony offenders under the authority of a community sentence.
3. "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, under the Community Sentencing Act.
4. "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.
5. "Community custody" means any person sentenced to a community sentence pursuant to the "Act" shall be in community custody within the county. 22 O.S. 2000 Supp. § 988.12 (A).
6. "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.
7. "Deadly Sins" The eleven deadly sins are violent crimes and an offender convicted of these crimes are excluded from community sentencing. The eleven deadly sins are: (1) Arson - First degree; (2) Bombing; (3) Burglary - First degree; (4) Child pornography; (5) Child prostitution; (6) Crimes against children provided in 10 O.S. 2000 § 7115; (7) Forcible sodomy; (8) Lewd molestation; (9) Murder - First degree; (10) Rape - First degree; (11) Robbery with a dangerous weapon. 21 O.S. Supp. 2000 § 13.1.
8. "Deferred Sentence" - The Court, without entering a judgment of guilt, defers sentencing upon specific conditions prescribed by the Court, not to exceed a five-year period. 22 O.S. Supp. 2000 § 991c(A). The Court may order a community punishment as a condition of a deferred sentence. 22 O.S. Supp. 2000 § 988.19(A).
9. "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.
10. "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.

11. "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 57 O.S. Supp. 1993 § 571(5)<sup>1</sup> 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. This consent shall be made a part of the record of the case. 22 O.S. Supp. 2000 § 991a(C); 22 O.S. Supp. 2000 § 991c(F);
12. "Felony" A felony is a crime, which is or may be, punishable with death, or by imprisonment in the penitentiary. 21 O.S. Supp. 1999 § 5.
13. "Incentive" means a Court-ordered reduction in the terms or conditions of a community sentence that is given for exceptional performance or progress by the offender.
14. "Inmate" is a criminal incarcerated in a Department of Corrections penal institution. An offender sentenced to a community sentence is not an inmate. 22 O.S. Supp. 2000 § 988.12 (A).
15. "LSI" or Level of Service Inventory is the evaluation assessment required by the Community Sentencing Act to determine criminal risk to recidivate. It may not be waived. 22 O.S. Supp. 2000 § 988.17.
16. The "Lumpkin Form" is the Acceptance of Plea form used for taking pleas of guilty and *nolo contendere*.
17. "Misdemeanor"— Every crime that is not a felony is a misdemeanor and is punishable by imprisonment in the county jail up to one year or a fine of up to \$500, or both, unless a different punishment is prescribed by statute. 21 O.S. 1991 § 6. A misdemeanor offense is not eligible for a community sentence.

---

<sup>1</sup> 1) Aggravated assault and battery on a police officer sheriff, highway patrolman, or another officer of the law; 2) Armed robbery; 3) Arson in the first degree; 4) Assault, battery, or assault and battery with a dangerous weapon; 5) Assault with intent to commit a felony; 6) Assault with intent to kill; 7) Assaults while masked or disguised; 8) Burglary in the first degree; 9) Burglary with explosives; 10) Child beating; 11) Criminal syndicalism; 12) Extortion; 13) Forcible sodomy; 14) Inciting to riot; 15) Injuring or burning public buildings; 16) Kidnapping; 17) Kidnapping for extortion; 18) Lewd or indecent proposition, or lewd or indecent act with a child; 19) Maiming; 20) Manslaughter in the first degree; 21) Manslaughter in the second degree; 22) Mistreatment of a mental patient; 23) Murder in the first degree; 24) Murder in the second degree; 25) Obtaining signature by extortion; 26) Pointing firearms; 27) Poisoning with intent to kill; 28) Rape by instrumentation; 29) Rape in the first degree; 30) Rape in the second degree; 31) Rioting; 32) Robbery; 33) Robbery by two (2) or more persons; 34) Robbery in the first degree; 35) Robbery in the second degree; 36) Robbery with dangerous weapon or imitation firearm; 37) Sabotage; 38) Seizure of a bus, discharging firearm or hurling missile at bus; 39) Use of a firearm or offensive weapon to commit or attempt to commit a felony; 40) Wiring any equipment, vehicle or structure with explosives.

18. "Moral Reconation Therapy" is a treatment program that deals with the offender's recognition of culpability and the resolve to change behavior.
19. "PSI" or Presentence Investigation is the assessment ordered by the Court to provide information necessary to evaluate the offender for sentencing. This may be conducted, but is not required, for offenders deemed eligible for community sentencing except for those "violent offenses" enumerated in 22 O.S. Supp. 1997 § 982 (F); 22. O.S. Supp. 1997 § 982 (C)(E).
20. "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 inter-local agreements and interagency cooperation.  
22 O.S. Supp. 2000 § 988.2 (A)
21. "Suspended Sentence"— When an offender is convicted of an eligible crime, the Court may suspend execution of the sentence.  
22 O.S. Supp. 2000 § 991a(A)(1). The Court may order a community punishment as a condition of a suspended sentence. 22 O.S. Supp. 2000 § 988.19(A).

### C. Status of the Offender– Community Custody

1. A person sentenced to a community sentence is to be termed an offender– not inmate.

“Any person sentenced to a community punishment shall not be deemed an inmate, nor shall the person be considered to be in the custody of the Department of Corrections, nor shall the person require processing through the Lexington Reception and Assessment Center. 22 O.S. Supp. 2000 § 988.12 (A).

2. Persons sentenced to community punishment shall be in community custody within the county. 22 O.S. Supp. 2000 § 988.12(A).
3. A community sentence shall not require active supervision, programs or services for more than three years. However, this should not be interpreted as limiting the length of sentence imposed by the Court. 22 O.S. Supp. 2000 § 988.22(E).
  - a. Monetary obligations may extend beyond the three-year limitation. 22 O.S. Supp. 2000 § 988.22 (E).
4. The Act does not confer any rights upon the offender to avoid a term of imprisonment prescribed by law for the offense. 22 O.S. Supp. 2000 § 988.22 (D).
5. Offenders have no special appeal rights for failure to be offered specific punishment or treatment options. 22 O.S. Supp. 2000 § 988.22 (D).

### III. Evaluation of Eligible Offenders

#### A. Eligible Offender for Community Sentencing

1. "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. 22 O.S. Supp. 2000 § 988.2 (A)(8).
2. Offender must have been convicted of or entered a guilty or *nolo contendere* plea for a non-violent felony offense, or the District Attorney must consent to a community sentence for a violent crime enumerated in 57 O.S. Supp. 1993 § 571(5); 22 O.S. Supp. 2000 § 991a(C); 22 O.S. Supp. 2000 § 991c(F). Note that there is an absolute bar for the "Eleven Deadly Sins" crimes enumerated in 21 O.S. Supp. 2000 § 13.1.
3. Offender must be eligible for probation. 22 O.S. Supp. 2000 § 988.19 (A).

##### a. Deferred Sentence Eligibility

1. Offender cannot have been previously convicted of a felony; OR
2. There must be a waiver by:
  - a. Written application and consent of the district attorney, and
  - b. Both the application and the waiver must be memorialized in the Court record of the case. 22 O.S. Supp. 2000 § 991c(F).

##### b. Suspended Sentence Eligibility

1. Available only to offenders for the first or second felony conviction;

##### UNLESS

2. There is:
  - a. Written application and consent of the District Attorney, and

- b. Both the application and the waiver must be memorialized in the Court record of the case. 22 O.S. Supp. 2000 § 991a(C).

OR

- c. The charge is DUI 2<sup>nd</sup>. For multiple DUI offenders, 47 O.S. Supp. 2000 § 11-902 allows for a suspended sentence without prior District Attorney consent, but with substantial requirements, including in-patient treatment; aftercare; up to 480 hours community service; ignition interlock and electronic monitoring.
4. A completed Level of Service Inventory (“LSI”) assessment instrument, or other instrument approved by the Department of Corrections, must be completed and the offender must score within the moderate (19-28) range to be eligible for any state-funded community sentence treatment. 22 O.S. Supp. 2000 § 988.18 (E).
    - a. A LSI score in the high range (29-54) makes the offender ineligible. 22 O.S. Supp. 2000 § 988.18 (E).
    - b. A LSI score in the low range (0-18) makes the offender ineligible for state-funded community sentence treatment. 22 O.S. Supp. § 2000 988.18 (E).
      1. Felony offenders scoring in the low risk/needs LSI level may be sentenced to a suspended sentence with minimal, if any conditions of the sentence to be paid by the offender. 22 O.S. Supp. 2000 § 988.18 (F).
  5. The Level of Service Inventory or other approved assessment is required and cannot be waived. 22 O.S. Supp. 2000 § 988.17(A).
    - a. Purpose of the assessment is to identify the offender’s:
      1. pro-social needs,
      2. deficiencies,
      3. potential risk to commit additional offenses,
      4. threat to the public safety, and
      5. the appropriateness of various community punishments. 22 O.S. Supp. 2000 § 988.18(B).
  6. The Adult Substance Use Survey (ASUS) is also required by DOC administrative policy.

7. The Court may order a Presentence Investigation (PSI) as part of the evaluation process, but it is not required, unless required for the specific offense pursuant to 22 O.S. Supp. 1997 § 982(C)(E)(F). Offenders who enter a plea to any of the following crimes (or an attempt to commit the same) must have a PSI:
  1. Aggravated assault and battery on a police officer, sheriff, highway patrolman, or any other officer of the law.
  2. Assault, battery, or assault and battery with a dangerous weapon.
  3. Assault with intent to commit a felony.
  4. Assault with intent to kill.
  5. Assaults while masked or disguised.
  6. Burglary with explosives.
  7. Kidnapping.
  8. Kidnapping for extortion.
  9. Manslaughter in the first degree.
  10. Manslaughter in the second degree.
  11. Murder in the second degree.
  12. Rape by instrumentation.
  13. Rape in the second degree.
  14. Robbery.
  15. Robbery by two (2) or more persons.
  16. Robbery in the first degree.
  17. Robbery in the second degree.
  18. Shooting with intent to kill.
  19. Use of a firearm or offensive weapon to commit or attempt to commit a felony.
8. Both the completed assessment(s) and a written supervision plan must be presented to the Court prior to determining the punishment for the offense.  
22 O.S. Supp. 2000 § 988.18(B).
9. The Court is not required to sentence an offender to community punishment regardless of an eligible score on the “LSI”. 22 O.S. Supp. 2000 § 988.18(F).

## 10. Special Ineligibility Provisions

- a. Offenders that cannot be adequately evaluated using the “LSI” or other assessment will be deemed ineligible. 22 O.S. Supp. 2000 § 918.18(C).
- b. Willful failure or refusal to be assessed or evaluated will make the offender ineligible.  
22 O.S. Supp. 2000 § 988.18(D).
- c. No state funds may be used for community sentencing programs offered on the misdemeanor portion of the offense(s). 22 O.S. Supp. 2000 § 988.19(B).

## B. Optional Eligibility for Community Sentencing

1. “Eleven Deadly Sins” violent crimes are an absolute bar to community sentencing. 21 O.S. Supp. 2000 § 13.1; 22 O.S. Supp. 2000 § 988.2 (A)(8). The eleven deadly sins are:
  1. Arson - First degree
  2. Bombing
  3. Burglary - First degree
  4. Child pornography
  5. Child prostitution
  6. Crimes against children provided in 10 O.S. Supp. 2000 § 7115.
  7. Forcible sodomy
  8. Lewd molestation
  9. Murder - First degree
  10. Rape - First degree
  11. Robbery with a dangerous weapon
2. In addition to the absolute bar to eligibility for the eleven deadly sins crimes, offenders prosecuted for crimes listed in 57 O.S. Supp. 1993 §571(5) as exceptions to the definition of “nonviolent offense” in the Oklahoma Prison Overcrowding Emergency Act are also ineligible unless:
  - a. The District Attorney consents to the eligibility;
  - b. The consent is in writing; and
  - c. The consent is memorialized in the Court record of the case. 22 O.S. Supp. 2000 § 988.2 (A)(8).

3. Violent offenses, or any attempt to commit or conspiracy or solicitation to commit the violent offense, are ineligible unless the above exception is met.

Pursuant to 57 O.S. Supp. 1993 § 571(5), the following offenses are deemed violent offenses:

1. Aggravated assault and battery on a police officer, sheriff, highway patrolman, or any other officer of the law.
2. Armed robbery.
3. Arson in the first degree.
4. Assault, battery, or assault and battery with a dangerous weapon.
5. Assault with intent to commit a felony.
6. Assault with intent to kill.
7. Assaults while masked or disguised.
8. Burglary in the first degree.
9. Burglary with explosives.
10. Child beating.
11. Criminal syndicalism.
12. Extortion.
13. Forcible sodomy.
14. Inciting to riot.
15. Injuring or burning public buildings.
16. Kidnapping.
17. Kidnapping for extortion.
18. Lewd or indecent proposition or lewd or indecent act with a child.
19. Maiming.
20. Manslaughter in the first degree.
21. Manslaughter in the second degree.
22. Mistreatment of a mental patient.
23. Murder in the first degree.
24. Murder in the second degree.
25. Obtaining signature by extortion.
26. Pointing firearms.
27. Poisoning with intent to kill.
28. Rape by instrumentation
29. Rape in the first degree.
30. Rape in the second degree.
31. Rioting.
32. Robbery.
33. Robbery by two (2) or more persons.
34. Robbery in the first degree.
35. Robbery in the second degree.
36. Robbery with dangerous weapon or imitation firearm.
37. Sabotage.

38. Seizure of a bus, discharging firearm or hurling missile at bus.
39. Shooting with intent to kill.
40. Use of a firearm or offensive weapon to commit or attempt to commit a felony.
41. Wiring any equipment, vehicle or structure with explosives.

C. Crimes Not Eligible For Community Sentencing

Pursuant to 21 O.S. Supp. 2000 § 13.1 and 22 O.S. Supp. 2000 § 988.2 (A)(8), the following crimes, known as the “eleven deadly sins,” are ineligible for community sentencing.

1. Arson - First degree
2. Bombing
3. Burglary - First degree
4. Child pornography
5. Child prostitution
6. Crimes against children provided in 10 O.S. 2000 § 7115
7. Forcible sodomy
8. Lewd molestation
9. Murder - First degree
10. Rape - First degree
11. Robbery with a dangerous weapon

Commencing in March 1, 2000, these crimes are covered as part of the Truth-in-Sentencing statute that requires that all offenders convicted of the eleven deadly sins crimes, serve not less than 85 percent of the sentence of imprisonment within the Department of Corrections. Parole cannot be considered prior to serving 85 percent of the imposed sentence, and there is no eligibility for earned credits or any other type of credits which have the effect of reducing the length of the sentence to less than 85 percent of the sentenced imposed. 21 O.S. Supp. 2000 § 13.1.

D. Misdemeanors and Felony Offenses/ Combination Sentencing Procedure

1. Offenders pleading guilty or *nolo contendere* to a combination of misdemeanor and felony offenses may receive services from a local community sentencing system for the felony offense.
2. Misdemeanor offenses are ineligible for community sentencing. 22 O.S. Supp. 2000 § 988.19 (B); § 988.2(A)(8).
  - a. No state funds shall be used for payment of misdemeanor offenses. 22 O.S. Supp. 2000 §988.19 (B).

## IV. Court Procedures: Plea; Sentence; Appeal

### A. Order Offender Assessment

1. Prior to sentencing, for any felony offender being considered for community punishment, the Court must order the Level of Service Inventory (LSI) assessment. 22 O.S. Supp. 2000 § 988.18 (A).
2. Some Courts order the LSI before plea and some order it after plea.
3. The Court should order the Adult Substance Use Survey (ASUS). The ASUS is required by DOC administrative policy.
4. The Court may also order a Presentence Investigation report (PSI) from the Department of Corrections. Offenders who enter a plea to any of the following crimes (or an attempt to commit the same) must have a PSI: 22 O.S. Supp. 1997 §982 (C)(E)(F).
  1. Aggravated assault and battery on a police officer, sheriff, highway patrolman, or any other officer of the law.
  2. Assault, battery, or assault and battery with a dangerous weapon.
  3. Assault with intent to commit a felony.
  4. Assault with intent to kill.
  5. Assaults while masked or disguised.
  6. Burglary with explosives
  7. Kidnapping.
  8. Kidnapping for extortion.
  9. Manslaughter in the first degree.
  10. Manslaughter in the second degree.
  11. Murder in the second degree.
  12. Rape by instrumentation
  13. Rape in the second degree.
  14. Robbery.
  15. Robbery by two (2) or more persons.
  16. Robbery in the first degree.
  17. Robbery in the second degree.
  18. Shooting with intent to kill.
  19. Use of a firearm or offensive weapon to commit or attempt to commit a felony.

- B. The Court must order a deferred or suspended sentence for the offense. 22 O.S. Supp. 2000 § 988.19(A) and 22 O.S. Supp. 2000 § 990a-1.1.
- C. The Court then must order the appropriate community punishment in a sentencing hearing as a condition of the deferred or suspended sentence. 22 O.S. Supp. 2000 § 988.19(A).
  - 1. The Court may order any condition or combination of conditions it deems appropriate and available pursuant to guidelines of the Local Planning Council and sentencing powers of the Court.
    - a. Sentencing Powers of the Court.  
22 O.S. Supp. 2000 § 991a
    - b. Services provided to the Court through provisions and direction of the Local Community Sentencing Planning Council.  
22 O.S. Supp. 2000 § 988.8 (A).
- D. Notice -Any offender ordered to participate in the local community sentencing system, must be fully advised of the conditions of the specific program to which he or she has been assigned. 22 O.S. Supp. 2000 § 988.22 (A).
  - 1. Offender must sign the “Rules and Conditions Of Community Sentence” in open Court.
- E. The imposition of a community sentence is neither mandatory, even when the offender is eligible, nor does the failure to impose a community sentence grant the offender the grounds for any additional rights for an appeal. 22 O.S. Supp. 2000 § 988.22 (D).
  - 1. The judge is not required to impose a community sentence, even if all statutory elements are met.  
22 O.S. Supp. 2000 § 988.22 (D).
    - a. The Community Sentencing Act does not confer a right to the offender to avoid a term of imprisonment prescribed by law for the offense.  
22 O.S. Supp. 2000 § 988.22 (D).
  - 2. Failure to impose a community sentence, or to offer any specific punishment or specific treatment option does not grant the offender any additional rights for appeal.  
22 O.S. Supp. 2000 § 988.22 (D).
- F. Judicial Discretion and Sentencing Guidelines
  - 1. When sentencing a person convicted of a crime, the Court shall first consider restitution for the victim, as well as imposition of a fine or incarceration of the offender.  
22 O.S. Supp. 2000 § 991a (C).

2. The Court may order, in its discretion, as a community punishment any condition listed as a condition available for a deferred or suspended sentence.  
22 O.S. Supp. 2000 §988.8(B); 988.19(A); 991a; 991c .
3. Community sentence options must meet the eligibility criteria established by the program and score components for the LSI or other approved assessment.  
22 O.S. Supp. 2000 § 988.8(A)
4. The local system shall strive to have available to the Court all of the following services for eligible offenders:
  - a. Community service with or without compensation to the offender;
  - b. Substance abuse treatment and availability for periodic drug testing on offenders following treatment;
  - c. Varying levels of supervision by the Department of Corrections probation officers or other qualified supervision source;
  - d. Education and literacy programs;
  - e. Employment opportunities and job skills training;
  - f. Enforced collections; and
  - g. Availability of county jail or other restrictive housing facility for limited disciplinary sanctions.  
22 O.S. Supp. 2000 § 988.8 (A) (1-7).

G. Supervising authority for all offender placements within the local community sentencing system is the responsibility of the Local Administrator. 22 O.S. Supp. 2000 § 988.19(A).

H. In all cases in which an offender is sentenced to a community punishment, the offender shall be ordered, as part of the terms and conditions of the sentence, to pay for the Court ordered community sentence. 22 O.S. Supp. 2000 § 988.9(C).

1. Payments may be made pursuant to a periodic payment schedule based upon the offender's ability to pay; or
2. If the offender does not have the ability to pay, payments shall be made from the local community system funds.  
22 O.S. Supp. 2000 § 988.8 (C).

I. Cost Effectiveness of Community Sentencing Punishment

1. The sentencing judge must consider the most cost-effective treatment specifically targeted for the offender's needs as determined by the LSI assessment. 22 O.S. Supp. 2000 § 988.10 (B).
2. It is the responsibility of the sentencing judge, the local system, the prosecutor and the defense attorney to be aware of the local correctional resources and to utilize those resources in the most efficient manner when punishing eligible offenders. 22 O.S. Supp. 2000 § 988.10 (A).

J. Taking Pleas of Guilty or *Nolo Contendere*/Acceptance of Plea Litany

1. Give the oath to the offender. (Instruct offender to raise right hand).  
Ask the offender:
  - a. Do you solemnly swear or affirm to tell the truth the whole truth, and nothing but the truth?
  - b. Do you understand that you are now under oath and if you answer any of my questions falsely, your answers may later be used against you in another prosecution for perjury or making false statements?
  - c. Is there anything about your mental or physical health today that interferes with your ability to transact business as serious as this?
2. Determine, on the record, the purpose of the offender's appearance; that is, obtain a statement from the defense counsel that the offender wishes to enter a plea of guilty or *nolo contendere*.
  - a. You stand before this Court charged with the crime(s) of \_\_\_\_\_.  
--Is there an announcement from the State regarding these charges? (At this point the State may announce an amendment to the charge or dismissal of some of the charges).
  - b. Do you wish to give up your right to trial and enter into a plea agreement with the State?
3. Accepting pleas from offenders who do not speak English as a first language requires special provisions for the use of a translator.
4. Read the following statements to the offender:
  - a. You have the right to a speedy trial before a jury or judge for the determination of whether you are guilty or not guilty, and if found guilty, to determine a sentence.

- b. At the trial:
  - i. You have the right to be represented by a lawyer. If you are unable to afford an attorney, the Court will appoint an attorney for you.
  - ii You are presumed to be innocent of the charges.
  - iii You may remain silent or, if you choose, you may testify on your own behalf.
  - iv. You have the right to see and hear all witnesses called to testify against you and the right to cross-examine them.
  - v. You may call witnesses and have your witnesses ordered to appear in Court to testify and present evidence of any defense you have to these charges.
  - vi. The state is required to prove each element of the crime charged beyond a reasonable doubt.
  - vii. The verdict of guilty or not guilty decided by a jury must be unanimous.

5. Ask the offender the following questions:

- a. Do you understand each of these rights?
- b. Do you understand that by entering a plea of guilty or *nolo contendere* that you give up these rights?
- c. Do you understand that a conviction on a plea of guilty could increase punishment for any future crime committed after this plea?
- c. Is \_\_\_\_\_ your attorney?
- e. Have you talked over the charge(s) with your attorney, advised him/her regarding any defenses you may have to the charges and received his/her advice?
- f. Do you believe your attorney has effectively assisted you in this case and are you satisfied with his/her advice?
- g. Do you wish to change your plea of not guilty to guilty or *nolo contendere* and give up your right to a trial and all other previously explained constitutional rights?

- h. Have you, with the assistance of your attorney, reached an agreement to resolve this case?
- i. Did you have an opportunity to read and discuss the plea agreement with your attorney before you signed it?
- j. Do you understand the terms of the plea agreement?
- k. Do you understand that the Court is not bound by any agreement as to punishment or recommendation and if the Court does not accept the plea agreement you have the right to withdraw your plea of guilty?
- l. Do you understand that if there is no plea agreement that the Court can sentence you within the range of punishment for the crimes to which you are entering a plea?
- m. Do you understand that your plea of guilty to the charge(s) is after:
  - a. no prior felony convictions, or
  - b. one (1) prior felony conviction, or
  - c. two (2) or more prior felony convictions?
- n. State each charge to which the offender is pleading and ask: What is/are your plea(s) to each charge?
- o. Did you commit the acts as charged in the Information?
- p. Ask the offender to state the factual basis for their plea(s) to each charge.
- q. Have you been forced, threatened, or promised anything by anyone to have you enter your plea(s)?
- r. Do you plea guilty or *nolo contendere* of your own free will and without any coercion or compulsion of any kind?
- s. Do you have any additional statements to make to the Court?
- t. Do you have any questions?
- u. Is there any reason why you should not be sentenced now?

K. Sentencing-The Court must sentence the offender to a suspended or deferred sentence as follows:

1. Suspended Sentence

- a. Find the offender guilty beyond a reasonable doubt of the relevant crime(s).
- b. Sentence the offender to the agreed number of years and suspend the same.
- c. Order the offender to be supervised by the Community Sentencing Division during probation. Ask the offender if he/she has read the rules and conditions of supervision and signed the same. Order the offender to comply with the supervision and intervention plan set out in the LSI summary report. Order the offender to complete the specific punishment(s), program(s), treatment(s), or community service as a condition of the suspended sentence.
- d. Order the offender to pay:
  - i. Court costs;
  - ii. Supervision Fee of \$40.00 per month;
  - iii. An Administrative Fee of \$20.00 per month;
  - and
  - iv. Court ordered sanctions, based on ability to pay, per 22 O.S. Supp. 2000 § 988.8(C).
  - v. Any other fines, assessments, or restitution as determined by the Court.
- e. Financial assessments can be levied by the Court. They may include: 22 O.S. Supp. 2000 § 988.9; 991a(1).
  - i. Fines;
  - ii. Payment of fees for costs of treatment, education, supervision, or program participation;
  - iii. Restitution to the victim;
  - iv. Payment to victim compensation funds, certified reward system, or trust funds;
  - v. Reimbursement to state agencies for medical expenses and investigation costs;
  - vi. Reimbursement to Court for Court appointed attorneys;
  - vii. Payment of Court costs, monitoring or other program reimbursement costs;
  - viii. Other options selected by the Court or the local authority. 22 O.S. Supp. 2000 § 988.20.
  - ix. These fines and assessments may be collected in the same manner as Court costs. 22 O.S. Supp. 2000 § 988.9(C).

- f. Instruct the offender that they are subject to all of the rules and conditions of the Community Sentencing Division, pursuant to the rules and conditions of supervision.
- g. Ask the offender:
  - i. Do you understand the conditions of this suspended sentence?
  - ii. Do you understand that continuation of the community punishment depends upon your conduct?
  - iii. Do you understand that violation of the terms and conditions of the community sentence may result in disciplinary sanctions that may include, but are not limited to, a term of confinement not to exceed thirty (30) days per occasion in the county jail, residential treatment facility, halfway house or restrictive housing facility or other sanctions set forth in the standing order?
  - iv. Do you understand that even when active supervision is ended, community sentencing obligations continue until fully completed, including any payment of fines or restitution until such time as they are paid in full?
  - v. Do you understand that a violation of the law or the rules and conditions of the community sentence may cause this Court to revoke your suspended sentence and incarcerate you for the full term of the original sentence? 22 O.S. Supp. 2000 § 988.19 (F)(I); 22 O.S. Supp. 1999 §991b.

## 2. Deferred Sentence

- a. Withhold a finding of guilt, and defer imposition of the sentence to a date certain corresponding to the end of the deferred period.
- b. Order the offender to be supervised by the Community Sentencing Division during probation. Ask the offender if he/she has read the rules and conditions of supervision and signed the same. Order the offender to comply with the supervision and intervention plan set out in the LSI summary report. Order the offender to complete the specific punishment(s), program(s), treatment(s), or community service as a condition of the deferred sentence.
- c. Order the offender to pay:
  - i. Court costs;
  - ii. A supervision fee of \$40.00 per month;
  - iii. An administrative fee of \$20.00 per month; and
  - iv. Court ordered sanctions, based on ability to pay, per 22 O.S. Supp. 2000 §988.8 (C);
  - v. Any other assessments, fees or restitution as ordered by the Court.
- d. Financial assessments can be levied by the Court. They may include: 22 O.S. Supp. 2000 § 988.9; 991a(1).
  - i. Fines;
  - ii. Payment fees for costs of treatment, education, supervision, and program participation;
  - iii. Restitution to the victim;
  - iv. Payment to victim compensation funds, certified reward systems, or trust funds;
  - v. Reimbursement to state agencies for medical expenses and investigation costs;
  - iv. Reimbursement to Court for Court appointed attorneys;
  - v. Payment of Court costs, monitoring or other program reimbursement costs;
  - vi. Other options selected by the Court or the local authority. 22 O.S. Supp. 2000 § 988.20.
  - vii. These fines and assessments may be collected in the same manner as Court costs. 22 O.S. Supp. 2000 § 988.9(C).

- e. Instruct the offender that they are subject to all of the rules and conditions of the Community Sentencing Division, pursuant to the rules and conditions of supervision.
- f. Ask the offender:
  - i. Do you understand the conditions of this deferred sentence?
  - ii. Do you understand that continuation of the community punishment depends upon your conduct?
  - iii. Do you understand that violation of the terms and conditions of the community sentence may result in disciplinary sanctions that may include, but are not limited to, a term of confinement not to exceed thirty (30) days per occasion in the county jail, residential treatment facility, halfway house or restrictive housing facility, or other sanction set forth in the standing order?
  - iv. Do you understand that even when active supervision is ended, community sentencing obligations continue until fully completed, including any payment of fines or restitution until such time as they are paid in full?
  - v. Do you understand that violation of the law or the rules and conditions of the community sentence may cause this Court to accelerate your deferred sentence and find you guilty of the relevant crime(s) and sentence you accordingly and proceed as provided in 22 O.S. Supp. 2000 § 991b or may modify any condition imposed. 22 O.S. Supp. § 2000 991c (E). In the event your sentence is accelerated, do you understand that the Court has the power to sentence you to up to the maximum punishment allowed by law for the crime(s) to which you pled guilty? See Haynes v. State, 760 P.2d 829 (Okla. Cr. 1988).

### 3. Notice of Right of Appeal

On the day the sentence is imposed, notify the offender that there is a right to appeal (Rule 4.2 and 4.3 Rules of the Court of Criminal Appeals):

You have the right to appeal this suspended or deferred sentence on your plea of guilty or *nolo contendere*. You must file in the District Court Clerk's Office a written application to withdraw your plea of guilty within ten (10) days from today's date. You must set forth in detail why you are requesting to withdraw your plea. The trial Court must hold a hearing and rule upon your application within thirty (30) days from the date it is filed. If the trial Court denies your application, you have the right to ask the Court of Criminal Appeals to review the District Court's denial by filing a Petition for Writ of Certiorari within ninety (90) days from the date of the denial. Within ten (10) days from the date the Application to Withdraw Plea of Guilty is denied, Notice of Intent to Appeal and Designation of Record must be filed pursuant to Oklahoma Court of Appeals Rule 4.2(D). If you are indigent, you have the right to be represented on appeal by a Court appointed attorney.

- a. Do you understand each of these rights to appeal?
- b. Do you understand that assignment to community punishment does not offer any additional right to appeal? (In general, or for a specific alternative punishment).
- c. Have you fully understood the questions that have been asked?
- d. Have your answers been freely and voluntarily given?

## V. Instrument for Assessing Eligibility

### A. Level of Service Inventory (LSI) Risk-Need Assessment.

The Court is required to order all offenders being considered for community sentencing to undergo a LSI assessment (or other risk assessment instrument approved by DOC). 22 O.S. Supp. 2000 § 988.17(A); 22 O.S. Supp. 2000 § 988.18(B).

#### 1. Generally:

- a. An evaluation instrument designed to predict the risk to recidivate or re-offend.
- b. The LSI may not be waived.  
22 O.S. Supp. 2000 § 988.17(A).
- c. The judge must order prior to sentencing.  
22 O.S. Supp. 2000 § 988.18(A).
- d. The assessment and written supervision plan must be presented to the Court before sentencing.  
22 O.S. Supp. 2000 § 988.18(B).
- e. Failure or refusal of offender to submit to the LSI precludes the offender from receiving community sentencing. 22 O.S. Supp. 2000 § 988.18(D).
- f. The Court has absolute discretion on whether to sentence the offender to community sentencing. The Court is not required to sentence the offender to a community sentence, regardless of an eligible score on the LSI. 22 O.S. Supp. 2000 § 988.18(F).

#### 2. Purpose of the LSI. 22 O.S. Supp. 2000 § 988.18(B).

- a. Evaluates offender's risk of re-offending.
- b. Identifies the offender's deficiencies and pro-social needs. Need refers to the pro-criminal circumstances of the offender. These needs include substance abuse, educational and employment deficiencies, pro-criminal attitudes, values and beliefs, and pro-criminal companions and associates.
- c. Identifies the appropriateness of various community punishments.

#### 3. Composition of the LSI:

- a. The LSI consists of 54 questions which cover:

- i. criminal history,
  - ii. educational history,
  - iii. employment history,
  - iv. financial status,
  - v. family and relationship status,
  - vi. past and current alcohol and drug use,
  - vii. companions and associates,
  - viii. leisure time activities,
  - ix. mental health history and status  
(not a formal evaluation), and
  - x. attitude and orientation.
- b. The LSI must include a supervision plan and must identify an appropriate community punishment. 22 O.S. Supp. 2000 § 988.18(E).
  - d. The offender must score within the moderate range (19-28) of the risk score on the LSI in order to be eligible for a community sentence. The prevailing theory is that those scoring in the moderate range are more likely to re-offend without intervention services than those who scored lower; consequently, it is believed that monetary resources are better invested in moderate-scoring offenders. 22 O.S. Supp. 2000 § 988.2 (A)(8).
  - e. A felony offender scoring in the low range may be sentenced to a suspended or deferred sentence with community sentence requirements to be paid by the offender. 22 O.S. Supp. 2000 § 988.18(F).

4. Rationale of the LSI:

The higher risk score warrants a higher level of supervision. The lower risk score indicates a lower requirement of supervision and treatment.

5. Scoring the LSI three Components:

- a. The Risk Score ranges between 0-54, and is designed to measure the offender's risk of recidivism.
  - i. Offenders must score within the moderate range (19-28) to be eligible for community sentencing. 22 O.S. Supp. 2000 § 988.18 (E) and 22 O.S. Supp. 2000 § 988.2 (A)(8).

ii. Risk Score Range:

High	29-54	Offender Ineligible
Moderate	19-28	Offender Eligible

Low                      0-18                      Offender Ineligible<sup>2</sup>

- b. The Needs Score provides a profile of supervision and treatment needs based on pro-criminal tendencies; such as, substance abuse, education and employment deficiencies, criminal attitudes, values, beliefs, criminal companions, and associates.
  - i. This scale is reflected as a percentage.
  - ii. The percentages are prioritized to form the basis for the conditions of the suggested supervision and treatment.
  - iii. Needs may be prioritized as primary or secondary.
- c. The Protective Factor Score indicates the pro-social influences that are present in the offender's circumstances.
  - i. This score is inversely related to the risk score.
  - ii. As this score increases, it should reflect positive change in the offender during the course of the sentence.

---

<sup>2</sup> The local system may make provisions to allow community sentencing for low scoring offenders only on an offender-pay basis. 22 O.S. Supp. 2000 §988.18(E).

## 6. Administering the LSI

- a. The LSI must be administered and scored by an appropriately trained person.
- b. If the offender lacks sufficient skills to participate in the LSI, the offender shall be given appropriate assistance.
- c. Offenders in the community sentencing program should be reassessed every six months during the length of their sentences.

## B. Adult Substance Use Survey (ASUS)

1. The Adult Substance Use Survey (ASUS) is a self-evaluation instrument that is completed by the offender regarding the use of alcohol or drugs.
2. An evaluator then reviews the instrument, combines the information with other information available, and completes a report that is reviewed with the offender and is used to determine appropriate treatment.

## 2. ASUS Scoring

The ASUS scoring provides data in six basic areas relating to an offender's substance use:

- a. Involvement— Measures the level of past and current alcohol and drug use, including the types of drugs used.
- b. Disruption— Problems and negative consequences that stem from the offender's substance use.
- c. Social— Registers the offender's anti-social attitudes and behavior, including level for potential noncompliance. This can also be a reflection of both the need for treatment, and the possible resistance to treatment.
- d. Mood— This is not a formal mental health evaluation, but can gauge the presence of depression, anxiety, anger or overall psychological disruption. This score can indicate the need for further mental health evaluation.
- e. Defensive— This measures the level of denial by the offender and the cooperation of the offender in revealing sensitive information.
- f. Global Disruption Scale (GDS)— The GDS score is the sum of the first four scores— Involvement, Disruption, Social and Mood. In addition, this score provides an overall measurement of risk in the offender's life situation as related to substance use.

## C. Supervision and Intervention Report (SIR)

1. The assessment findings of the LSI and the ASUS are incorporated into the Supervision and Intervention Report.
  - a. A copy of the SIR and the assessment instruments are provided to the Court, the prosecuting attorney, and the defense counsel.
  - b. The reporting format will include:
    - i. Assessment results, and
    - ii. Recommendations for supervision and treatment.
  - c. Recommendations for sentence conditions are based upon these findings.
  - d. The goal of the SIR is to address the areas that require treatment and rehabilitation to end the offender's criminal involvement and to prevent recidivism.
  - e. The Court then reviews the LSI and ASUS, in conjunction with the SIR, to determine sentence conditions and designate the appropriate community sentence(s). 22 O.S. Supp. 2000 § 988.19.

## VI. Supervision of Community Sentenced Offenders

A. Supervision will be initiated upon order of the Court. 22 O.S. Supp. 2000 § 990a-1.1.

B. Active supervision may not exceed three years. 22 O.S. Supp. 2000 § 988.22 (E).

C. Supervision Providers:

Supervision of community sentenced offenders may be provided by:

1. Department of Corrections;
2. Probation and Parole/Community Corrections Division;
3. Local Community Sentencing System qualified provider; or
4. Qualified person designated by the Court.  
22 O.S. Supp. 2000 § 991a (A)(1)(r).

D. Levels of Supervision

1. Supervision will be provided in accordance with the level and duration specified by the Court.
2. The level of supervision specified by the Court shall only be changed by the express order of the Court.
3. Levels which may be specified by the Court:

a. Low-Level Supervision

This signifies occasional contacts with the offender by the monitoring agency or person.

b. Standard Supervision

This signifies scheduled and unscheduled personal contacts or other contacts by the monitoring person with the offender.

c. High-Level Supervision

This means a pre-determined schedule of personal contacts or other contacts by the monitoring person with the offender.

d. Intensive Supervision

This requires multiple weekly personal contacts by the monitoring person with the offender and unscheduled contacts by the monitoring person with the offender at varying times and places.

e. Electronic Monitoring

This requires supervision or surveillance of the offender by means of an electronic device approved by the Department of Corrections or the community sentencing system that is designed to determine that the offender is in the locations required by Court order. An offender is required to pay a monthly monitoring fee of up to \$75 per month. Violations can be detected, investigated and reported to the qualified supervisory agency or person. 22 O.S. Supp. 2000 § 991a (A)(1)(n)

E. Transfer of Supervision

An offender may request a reciprocal assignment in another jurisdiction to complete the terms and conditions of the community punishment. The receiving jurisdiction must agree, in writing, to accept the offender. The original jurisdiction must issue a Court order to effect the transfer. 22 O.S. Supp. 2000 § 988.22 (B).

F. Immunity

All state and local governments, community service agencies, nonprofit organizations, education, vocational or technical entities and other providers are granted immunity from liability for any acts of an offender participating in a community sentence program. 22 O.S. Supp. 2000 § 988.23.

## VII. Violation of Community Sentencing Conditions

A. Violations must be reported to the judge by the Local Administrator. 22 O.S. Supp. 2000 § 988.13 (A)(6).

B. Modification or Termination.

1. One must file a motion to modify and proceed as set forth in section VIII hereof.

and/or

2. The District Attorney may file an application to accelerate a deferred sentence or revoke a suspended sentence and proceed as set forth in section IX hereof.

3. The appropriate supervising authority will cite the rule or condition violated and how the offender violated the rule.

22 O.S. Supp. 2000 § 988.20.

- a. The officer will include information concerning the date, place and circumstances of the alleged offense or violation.
- b. This information should include a statement of witnesses, or an arrest report and statement of the arresting officer where applicable.
- c. If new criminal charges have been filed, then the formal statement of the charges along with agency filing charges, case number, pending trial date, amount of bond, and present location of the offender will be included.
- d. The Court takes appropriate action based upon the determination of the validity and seriousness of the violation, which may include no action, imposition of sanctions, or revocation.

C. Minor and Intermediate Violations-Standing Order

The Court may, through a standing Court order, provide for specific non-liberty-depriving sanctions and incentives that may be imposed upon the offender by the local administrator.

22 O.S. Supp. 2000 § 988.20 (B).

1. This order does not modify the original sentence.
2. Imposition of the disciplinary sanction is to gain compliance with the terms of the original Court ordered community punishment.

- D. The Court may order any community punishment available and funded in the jurisdiction that is deemed appropriate by the judge for the circumstances, pursuant to a motion to modify. 22 O.S. Supp. 2000 § 988.20 (A).
- E. Sanctions. 22 O.S. Supp. 2000 §§ 988.2(A)(6); 988.8(A); 988.20(A); § 991a(A)(1)(c); 988.19(F).
1. Generally:
    - a. The local community sentencing system is charged with providing a range of sanctions that give the Court a variety of accountability and control to change the offender's inappropriate behavior in terms of the imposed community sentence.
    - b. The Court has full discretion to impose the appropriate sanction to fit the violation of the offender in order to gain compliance with the original Court-ordered community sentence. 22 O.S. Supp. 2000 § 988.20(A).
  2. Definitions:
    - a. Sanctions are legally binding orders of the Court that deprive or restrict the liberty or property of the offender.
    - b. Intermediate sanctions are more intrusive than traditional probation, but less restrictive than total incarceration.
  3. Purpose:

The purpose of the sanction is to secure compliance of the offender with the community sentence, and to correct the inappropriate behavior.
  4. Standing Order:

The Court may impose a standing Court order that provides specific non-liberty-depriving sanctions that may be imposed upon the offender by the local administrator. 22 O.S. Supp. 2000 § 988.20 (B).
  5. Sanctions Available. 22 O.S. Supp. § 988.20(A)
    - a. Non-liberty depriving sanctions: The Court may authorize non-liberty depriving sanctions by the local administrator, such as increased home visits, increased educational requirements, surveillance, increased treatment, curfew adjustments, increased drug testing or other sanctions per the standing order. 22 O.S. Supp. 2000 §§ 988.8(A); 991a(A)(1); 991c(A).

- b. Liberty-depriving sanctions: 22 O.S. Supp. 2000 § 988.20(A)
1. Imprisonment not to exceed thirty days per disciplinary order in any of the following facilities:
    - i. The county jail (but not in the state penitentiary) 22 O.S. Supp. 2000 § 988.20 (E); or
    - ii. A residential treatment house that has an agreement with the local community sentencing system; or
    - iii. A restrictive housing facility; or
    - iv. A halfway house.
  2. The sheriff shall, upon order of the Court, deliver the offender to the designated place of confinement. The sheriff will be reimbursed by the local community sentencing system for transporting the offender. 22 O.S. Supp. 2000 § 988.20 (A).
  3. The offender shall be given day-for-day credit for any terms of incarceration served in the county jail or other restrictive facility. 22 O.S. Supp. 2000 § 988.20(A).
  4. The confining entity shall receive compensation from the local system. 22 O.S. Supp. 2000 § 988.20(D).
  5. Other liberty depriving sanctions, per the standing order such as increased community service, day reporting, or house arrest.

F. Incentives. 22 O.S. Supp. 2000 §§ 988.19(F); 988.20(C).

1. The Court may consider a reduction or modification of the community sentence and has the authority to offer incentives to the offender to encourage proper conduct in the community and for compliance with the community punishments. 22 O.S. Supp. 2000 § 988.20 (C).
2. A request to order incentives by the Court must originate through the modification of sentence process.  
22 O.S. Supp. 2000 § 988.20 (A).
3. The Court shall use its discretion in ordering appropriate incentives, after the motion to modify has been heard.  
22 O.S. Supp. 2000 § 988.20 (C).
4. Incentives may be granted to an offender for exceptional performance. For example, but not limited to:
  - a. Completion of, or outstanding performance in education or job training;
  - b. Service to the community.
5. The Court may impose a standing Court order that provides specific incentives that may be imposed upon the offender by the local administrator.  
22 O.S. Supp. 2000 § 988.20 (B).

## VIII. Modification of Sentence

- A. A proper motion to the Court pursuant to 22 O.S. Supp. 2000 § 988.19(D) must be made to modify a community sentence. 22 O.S. Supp. 2000 § 988.20 (A).
- B. A motion to modify the sentence may be made at any time during the community sentence to the Court that imposed the sentence.  
22 O.S. Supp. 2000 § 988.19 (C). The Court shall not be limited on the number of modifications within the term of the sentence 22 O.S. Supp. 2000 § 988.19(G).
- C. Procedure for Modification
  - 1. A properly filed motion is made to the Court that imposed the community sentence by: (22 O.S. Supp. 2000 § 988.19 (D)).
    - a. the district attorney
    - b. the offender 22 O.S. Supp. 2000 § 988.19(H)
    - c. the service provider
  - 2. The motion must be accompanied by any reports and/or other information available relating to the offender. Submission may be made by one of the following authorities:
    - a. The staff of the community sentencing system in which the offender is participating;
    - b. the sheriff;
    - c. the district attorney;
    - d. the service provider; or
    - e. any agency or person providing supervision of the offender.
  - 3. The reason for the motion to modify the sentence must also be submitted.
  - 4. The Court shall consider any reports and information submitted prior to modifying the sentence.  
22 O.S. Supp. 2000 § 988.19 (D).
  - 5. If the Court considers a motion to modify a community sentence: 22 O.S. Supp. 2000 § 988.19 (E).
    - a. A hearing shall be held in open Court.
    - b. Notice of the hearing must be given not less than ten (10) days prior to the hearing. Copies of any reports regarding the offender must be attached to the notice.

- c. The notice must be given to:
    - i. the offender;
    - ii. the offender's legal counsel;
    - iii. the district attorney of the county in which the offender was sentenced.  
22 O.S. Supp. 2000 § 988.19(E).
  - d. The Court may deny the motion without a hearing. 22 O.S. Supp. 2000 § 988.19(E).
6. Following the hearing, the Court shall enter an appropriate order. The Court may modify the community sentence in its discretion by imposing sanctions or granting incentives.  
22 O.S. Supp. 2000 §§ 988.19(F); 988.20(A).

#### D. Modification Options

- 1. Imposition of any other punishment allowed by law for the offense and appropriate for the circumstances as determined by the judge. 22 O.S. Supp. 2000 § 988.19(F).
  - a. Revocation or acceleration of the community sentence. See "Revocation Acceleration of Community Sentence," Section IX herein.
  - b. If the offender is incarcerated, the offender is to receive day-for-day credit for any kind of incarceration actually served as part of community punishment.
- 2. Disciplinary Sanctions-See "Sanctions," Section VII (E)
- 3. Incentives-See "Incentives," Section VII (F)

4. However, no punishment may be imposed that is greater than the maximum punishment that was allowed by law for the original offense. 22 O.S. Supp. 2000 § 988.19 (F).
5. The Court shall not be limited on the number of modifications a sentence may have within the term of the community sentence. 22 O.S. Supp. 2000 § 988.19(G).
6. Any offender who files meritless or frivolous motions to modify a sentence shall pay the cost of the proceedings and may be sanctioned by the Court. 22 O.S. Supp. 2000 § 988.19 (H).

## IX. Revocation or Acceleration of Community Sentence

- A. During the term of the community sentence, the Court may revoke or accelerate a community punishment. 22 O.S. Supp. 2000 § 988.19 (I).
1. The Court follows the traditional procedure for seeking revocation of a suspended sentence, or acceleration of the deferred sentence. 22 O.S. Supp. 2000 § 991b, 22 O.S. Supp. 2000 § 991c (E).
    - a. However no punishment shall be imposed that is greater than the maximum punishment allowed by law for the original offense. 22 O.S. Supp. 2000 § 988.19 (F).
  2. Earned Credits—

When a community sentence is revoked and the offender is incarcerated, the Court shall give day-to-day credit for any term of incarceration actually served as a community punishment. 22 O.S. Supp. 2000 § 988.21.
- B. Revocation or acceleration of the sentence should not be made through the modification of sentence procedure. 22 O.S. Supp. 2000 § 988.19(I); 22 O.S. Supp. 2000 § 991b(A); 22 O.S. Supp. 2000 § 991c(E).
1. Revocation of a suspended sentence or acceleration of a deferred sentence should be the product of a petition filed by the district attorney setting forth the grounds for the revocation/acceleration. 22 O.S. Supp. 2000 § 991b(A).
  2. The Court must hold a hearing within 20 days after the entry of a plea of not guilty to the petition. 22 O.S. Supp. 2000 § 991b(A).
  3. Offender is entitled to representation by counsel, to present evidence in his behalf, and to be confronted by witnesses. 22 O.S. Supp. 2000 § 991b (C).
- C. Failure to pay restitution may result in revocation of the community sentence. 22 O.S. Supp. 2000 § 991f (M)(3).

## X. Services Available to the Court and Sentencing Options

- A. Local systems are to have available the following services:
1. Community service with or without compensation to the offender;
  2. Substance abuse treatment and the availability for periodic drug testing for offenders following treatment;
  3. Various levels of supervision by the Department of Corrections probation officers or other qualified supervision source;
  4. Education and literacy programs;
  5. Employment opportunities and job skills training;
  6. Enforced collections;
  7. Availability of restrictive housing or county jail for limited disciplinary sanctions. 22 O.S. Supp. 2000 § 988.8 (A).
- B. Suspended Sentences--The Court may order as a community punishment, any condition available for a suspended sentence (See 22 O.S. Supp. 2000 § 991a (A)) in conjunction with probation such as: 22 O.S. Supp. 2000 § 988.8 (B)).
1. Restitution;
  2. Victim compensation;
  3. Community service without compensation;
  4. Payment to any trust fund for victims of crimes; 60 O.S. 1991 §§ 176-180.4
  5. Confinement in the county jail for a period not to exceed 6 months. This should not be confused with a disciplinary sanction allowed by 22 O.S. Supp. 2000 § 988.20(A).
  6. Reimbursement for Court-appointed attorneys;
  7. Repayment of reward to a certified local crime- stoppers program or the Oklahoma Reward System; 22 O.S. 1991 § 991g, 74 O.S. 1991 § 150.18
  8. Reimburse the Oklahoma State Bureau of Investigation for costs of investigation;

9. Payment to the Crime Victims Compensation Board; 21 O.S. Supp. 2000 § 142.2.
10. Participation in substance abuse education or treatment, and periodic testing for substance use;
11. Placement in a victim impact panel program and payment of fee for the program;
12. Installation of an ignition interlock device;
13. Electronic monitoring and payment of monitoring fee;
14. Assignment to one or more courses of treatment, education, or rehabilitation for any conditions, behaviors, deficiencies or disorders that may contribute to the criminal conduct— including, but not limited to, alcohol and substance abuse, mental health, emotional health, physical health, propensity for violence, antisocial behavior, personality or attitudes, deviant sexual behavior, child development, parenting assistance, job skills, vocational-technical skills, domestic relations, literacy, education, or any other identifiable deficiency which may be treated appropriately in the community and for which a certified provider or program is recognized by the Court;
15. Reparation, replacement or restoration of property;
16. Attendance at a victim-offender reconciliation program;
17. Supervision by Department of Corrections or other Court designated supervisor;
18. Other requirements set forth in 22 O.S. Supp. 2000 § 991a(A)(1).

C. Deferred Sentences--Upon a verdict or plea of guilty or *nolo contendere*, but before a judgment of guilt, the Court may defer proceedings conditional on the offender serving a community sentence. 22 O.S. Supp. 2000 § 991c.

1. The Court may order a community sentence as a condition of the deferred sentence.  
22 O.S. Supp. 2000 § 988.19 (A); 22 O.S. Supp. 2000 § 991c.

2. The Court may order any condition which can be imposed for a suspended sentence as described in 22 O.S. Supp. 2000 § 991a (A); 22 O.S. Supp. 2000 § 991c.

## XI. Reciprocity between Jurisdictions

- A. Under special circumstances, the offender may request a reciprocal assignment in another jurisdiction to complete the terms or conditions of the community punishment.  
22 O.S. Supp. 2000 § 988.22 (B).
1. The local community sentencing system must have a reciprocal agreement for services with the other jurisdiction.
  2. The receiving jurisdiction must have approved the transfer.
  3. The transferring jurisdiction must present a Court order to effect the transfer before the offender may be transferred.
  4. The originating Court must be informed when the offender has completed the terms or conditions of the community sentence. 22 O.S. Supp. 2000 § 988.22 (C).
- B. In the event the offender desires a transfer to a jurisdiction that does not have a reciprocal agreement for services, the sentencing Court may transfer the offender to DOC supervision. The Court may then authorize a transfer of supervision to the jurisdiction to which the offender is transferring.

## XII. Fee Structure and Payment Procedures

### A. Offender Payment of Court-ordered Community Punishment

1. The offender is ordered, as part of the terms and conditions of the sentence, to pay for the Court ordered sanction, based on ability to pay. 22 O.S. Supp. 2000 § 988.8 (C) .
2. Payment may be made on a periodic payment schedule established by the service provider. 22 O.S. Supp. 2000 § 988.8 (C).
3. If the offender is found unable to pay for the Court ordered community sentence, the payment shall come from funds budgeted for the local community sentencing system. 22 O.S. Supp. 2000 § 988.8 (C) .

### B. Supervision Fee

1. Any offender sentenced to a community sentence that requires supervision must pay a supervision fee.
  - a. The supervising agency shall establish the fee amount, but the fee may not exceed \$40.00 per month. 22 O.S. Supp. 2000 § 988.9 (A).
  - b. The fee is to be based on the offender's ability to pay.
    - i. In hardship cases, the supervising agency may waive all or part of the fee. 22 O.S. Supp. 2000 § 988.9 (A).
  - c. No supervising agency may deny any offender supervision services for the sole reason that the offender is indigent. 22 O.S. Supp. 2000 § 988.9 (A).

#### 2. Collection of Fees

- a. Fees collected for supervision services performed by the Department of Corrections shall be paid directly to the Department of Corrections Revolving Fund. 22 O.S. Supp. 2000 § 988.9 (A).
- b. Supervision services performed by agencies other than the Department shall be paid directly to that agency. 22 O.S. Supp. 2000 § 988.9 (A).

### C. Administrative Fee

1. Offenders participating in a community sentencing system under a Court-ordered punishment must also pay a fee to support the local system. 22 O.S. Supp. 2000 § 988.9 (B).
  - a. The fee is to be set by the Court.
  - b. The fee shall not exceed \$20.00 per month.
  - c. If the Court fails to order an amount for the administrative fee, the default fee will be \$20.00. 22 O.S. Supp. 2000 § 988.9 (B).
  - d. This fee will be deposited in the Community Sentencing Division of the Department of Corrections, and will be used to support the local community sentencing system. 22 O.S. Supp. 2000 § 988.9 (B).

#### D. Additional Costs Assessed by the Court

1. Mandatory
  - a. The Court is required to assess Court costs. 22 O.S. Supp. 2000 § 988.9 (C).
2. Discretionary
  - a. The Court may also order the offender to pay:
    - i. program reimbursement costs;
    - ii. restitution; and
    - iii. fines. 22 O.S. Supp. 2000 § 988.9 (C).

#### E. Medical Expenses

1. Any offender sentenced to a community sentence that does not include incarceration shall not have medical or dental expenses paid by the Department of Corrections or Community Sentencing Division. 22 O.S. Supp. 2000 § 988.12 (B).
2. If a medical emergency occurs while the offender is subject to a period of Court-ordered confinement, the local administrator may request assistance from the Community Sentencing Division. This shall be considered on a case-by-case basis. 22 O.S. Supp. 2000 § 988.12 (C).
3. Upon order of the Court, any felony offender that requires extended medical treatment or services relating to confinement, which is part of a Court-ordered sentence, may be transferred to the Department of Corrections for appropriate medical treatment.
  - a. The offender must be returned to the

local system following the necessary medical treatment; or

b. Upon completion of the sentence, whichever comes first. 22 O.S. Supp. 2000 § 988.12 (D).

4. The state will pay all required medical expenses while an offender is incarcerated in a county jail under a disciplinary sanction for a community punishment, if the state has the obligation to also pay for the incarceration under the Act. 22 O.S. Supp. 2000 § 988.12 (E).

#### F. Continuation of Financial Obligation

1. Supervision fees end with the termination of active supervision.

2. All other fees, costs, fines, restitution, or monetary obligations ordered by the Court to be paid by the offender do not end with the termination of active supervision, but continue until fully paid.  
22 O.S. Supp. 2000 § 988.9 (C).

### XIII. Community Sentence Completion Procedure

A. No community sentence may require active supervision, programs or services for more than three years. However, this should not be interpreted as limiting the length of sentence imposed by the Court. 22 O.S. Supp. 2000 § 988.22(E).

B. Monetary obligations are not restricted by the three-year limit, but continue until the obligation is paid in full and may be collected in the same manner as Court costs. 22 O.S. Supp. 2000 § 988.22 (E); 22 O.S. Supp. 2000 § 988.9 (C).

#### C. Procedures

1. Upon completion of any Court-ordered provision, the local administrator must file a statement with the Court defining the specific provision that has been completed.  
22 O.S. Supp. 2000 § 988.22 (C).

2. When all the Court-ordered provisions of the community sentence have been completed, the offender shall be deemed to have completed the community punishment.  
22 O.S. Supp. 2000 § 988.22 (C).
3. Where offenders have completed supervising conditions of the community sentence in another jurisdiction, the receiving jurisdiction must notify the sentencing Court of the completion. 22 O.S Supp. 2000 § 988. 22 (B).

D. Community Sentence Completion as Applied to the Deferred or Suspended Sentence

1. Deferred Sentence. 22 O.S. Supp. 2000 § 991c(C).
  - a. Upon determination by the Court that all conditions of the deferred sentence have been met, and all fines, fees and monetary assessments have been paid as ordered, the Court shall order that:
    - i. The offender shall be discharged without a Court judgment of guilt; and
    - ii. The Court shall order the verdict or plea of guilty or *nolo contendere* to be expunged from the record pursuant to the procedure set forth in 22 O.S. Supp. 2000 § 991c(C)(1-5); and
    - iii. The charge shall be dismissed with prejudice to any further action.  
22 O.S. Supp. 2000 § 991c (C).
  - b. All references to the offender's name shall be deleted from the docket sheet.  
22 O.S. Supp. 2000 § 991c (C)(1).
  - c. Upon order of the Court, the expungement shall be retroactive. 22 O.S. Supp. 2000 § 991c(D).
2. Suspended Sentence
  - a. Community sentence completion is reported to the Court.

#### XIV. Local Administration

- A. Local Administrator Determines Placements-The local community administrator shall have authority for all offender placements within the local community sentencing system pursuant to the Court-ordered community sentence. 22 O.S. Supp. 2000 § 988.19 (A).
- B. Duties of Local Administrator-The local administrator is charged with collaborating with the local community sentencing system to: 22 O.S. Supp. 2000 § 988.13(A).
1. Assist in administrating the day-to-day operation within the budget and plan, and abide by provisions of the Community Sentencing Act;
  2. Assist in identifying resources, collecting data on sentencing practices;
  3. Provide the Court with the list of available services for community sentencing;
  4. Carry out the Court orders of judgment and sentence for offenders pursuant the Community Sentencing Act requirements;
  5. Monitor the local service providers to insure appropriate delivery of services to the offender and in compliance with the goals of the local system;
  6. Report offender status to the Court, including:

- a. Completion of community sentencing conditions; and
  - b. Violations of Court orders;
7. Coordinate support for the planning council and the Court;
8. Ensure that all monies, including restitution, fees, fines, Court costs, administrative costs, treatment costs and other payments and fees are paid to the proper entity;
9. Keep accurate records for the local system and process the records for monitoring by the Community Sentencing Division;
10. Report the disposition of offenders serving community sentences to the appropriate state or federal agencies;
11. Report problems to the Community Sentencing Division of the Department of Corrections, and perform other functions as specified by the Division. 22 O.S. Supp. 2000 § 988.13 (A).

## XV. Communication and Record Keeping

The community sentencing system will work best if the flow of communication is complete among the parties.

- A. The Court should maintain a full record, including any sanctions, incentives, violations or modifications.
- B. The following information should be maintained by the supervising entity, district attorney, defense attorney and the local administrator:
  - 1. Type of offense
  - 2. Judgment and sentence imposed
  - 3. Rules and Conditions of Community Sentence
  - 4. Court-ordered modifications, sanctions, incentives, or violations.