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Linda G. Morrissey

Vickie S. Brandt

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COMMUNITY SENTENCING IN OKLAHOMA: OFFENDERS GET A SECOND CHANCE TO MAKE A FIRST IMPRESSION

The Honorable Linda G. Morrissey* and Vickie S. Brandt**

The judge had no choice.

She did not want to sentence the drug-addicted, single mother before her to twenty years in prison. But Oklahoma law said that, since this was not the woman's first felony conviction, she had to go straight to the penitentiary.

Never mind that the woman's previous felonies were nonviolent drug offenses, or that she had a two-year-old son to raise. She told the judge, with tears streaming down her face, "I have no family. . . Zachary and I only have each other." The punishment made Zachary an orphan, and his mother an inmate statistic in an already exploding prison population.

"I wish the law provided an alternative," said the judge. "Where is the justice in this result? And where has the system left little Zachary?"¹

Now, the judge has a choice. With the enactment of the Oklahoma Community Sentencing Act² in 1999, and reinforced by additional funding in 2000,³ the Oklahoma legislature gave judges across Oklahoma a new sentencing option. The Act was envisioned to be an effective tool in preventing recidivism by giving nonviolent offenders the opportunity to redirect their lives in a highly scrutinized collaboration of treatment and programs. The purpose of the Act is to protect the public in a cost-effective community sentencing system that utilizes a broad spectrum of supervised sanctions to treat both the criminogenic⁴ and social needs of the eligible⁵ offender while they remain in the community. Punishment

* Judge Morrissey is an Oklahoma District Judge, 14th District; assigned to the Criminal Division in Tulsa County. Judge Morrissey currently serves on the Judicial Sub-committee of the Tulsa County Criminal Justice Planning and Policy Council that is an integral part of the community sentencing program in Tulsa County. M.S. Counseling, Oklahoma State University, 1977; Juris Doctor, University of Oklahoma, 1980.

** Vickie S. Brandt, B.A. Political Science, University of Arkansas; Juris Doctor, University of Tulsa, 2001.

1. Remarks made by Judge Morrissey following the relevant plea.
2. Oklahoma Community Sentencing Act, OKLA. STAT. tit. 22, § 988.1-988.23 (Supp. 2000).
3. Brian Ford, *Education, Health Care Get Priority Budget Rises 10 Percent: Hey Big Spender!*, TULSA WORLD, May 28, 2000, available at 2000 WL 6786633.
4. Defined as the factors that establish the standards of conduct that determine the rational for engaging in antisocial behavior, and the offender's risk of re-offending.
5. OKLA. STAT. tit. 22, § 988.2 (A) (Supp. 2000).

and treatment options are made available through a unique criminal justice partnership between the private and public sectors, and among local and state agencies and governments.⁶ A highly individualized plan of treatment and rehabilitation is based upon a “third-generation” risk/need assessment instrument.⁷ Built into the Act is a multi-level safeguard system of sanctions to handle non-compliance with any community sentence;⁸ and procedures for both modification of the sentence,⁹ and for revocation of a suspended sentence,¹⁰ or acceleration of a deferred sentence.¹¹ Subsequent legislation, enacted by the legislature, has placed emphasis on restitution¹² and cost-effectiveness.¹³

This restorative approach to criminal justice helps promote, within the offender population, an awareness that when they commit a crime, they not only break the law, but they directly and dramatically adversely affect people—not only themselves, but usually those closest to them, as well. Community sentencing gives the offender the opportunity to alter behavior, accept responsibility and be rehabilitated.

I. THE HISTORY—SETTING THE STAGE FOR REFORM

In the 1990s, the state of Oklahoma, similar to most states, was faced with run-away costs;¹⁴ over-crowded, understaffed, and out-of-date prisons;¹⁵ and a community frustrated with what it perceived to be in-effective criminal justice.¹⁶ By 1999, Oklahoma prisons had reached near crisis level overcrowding with 95% of available prison space filled.¹⁷ Governor Frank Keating had twice rejected efforts to ease the problem by an early release program for inmates nearing the

6. OKLA. STAT. tit. 22, § 988.3 (Supp. 2000).

7. OKLA. STAT. tit. 22, §§ 988.17 (A), 988.18 (B), 988.8 (A) (Supp. 2000). *See also* Kelly Vance, *Adult Offender Standardized Assessment Quality Assurance: A Primary Building Block of Community Sentencing*, 4 COMMUNITY SENTENCING DIGEST (Sept. 2000). The Level of Service Inventory was developed and tested by criminal psychologist Dr. Don Andrews and Dr. James Bonata to measure both the static (historical, non-changeable factors and the dynamic or changeable factors. *Id.*

8. OKLA. STAT. tit. 22, § 988.20 (Supp. 2000).

9. OKLA. STAT. tit. 22, §§ 988.19, 988.20 (Supp. 2000).

10. OKLA. STAT. tit. 22, §§ 988.19 (I), 991b, 991f (M)(2) (Supp. 2000).

11. *Id.*

12. OKLA. STAT. tit. 22, § 991a (C)(Supp. 2000).

13. This is provided both in actual statute language. OKLA. STAT. tit. 22 § 988.10 (B) (Supp. 2000). Cost-effectiveness is also provided by the fee and payment structure that requires offenders to pay court costs, administrative costs and treatment costs. OKLA. STAT. tit. 22 § 988.9 (A), (B) (Supp. 2000).

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15. *Id.*

16. *See Rally*, THE DAILY OKLAHOMAN, May 20, 1999, available at 1999 WL 24687733. (Reporting a rally of various groups in support of community sentencing and truth in sentencing.) *See generally* Francis T. Cullen, Bonnie S. Fisher & Brandon K. Applegate, *Public Opinion About Punishment and Corrections*, 27 CRIME & JUST. 1 (2000).

17. Julie Delcour, Editorial, *Prison Costs: Is America Robbing Peter to Pay Paul?*, TULSA WORLD, November 14, 1999 available at 1999 WL 5420613.

end of their sentences.¹⁸ Crime rates in Oklahoma have declined since 1987, but, at the same time, the incarceration rate jumped to an all-time high.¹⁹ Statistics show that crime in Oklahoma had dropped at the rate of 10% per year from 1996 to 1998.²⁰ Nearly two million people were in prisons or jails,²¹ and, for the first time in 1998, imprisonment of nonviolent offenders²² had reached a national record of more than one million,²³ and the nonviolent offender population in Oklahoma represented 60% of the total prisoner population.²⁴ In both federal and state prisons, nonviolent offender admissions had grown by 80% since 1980.²⁵ Prison spending also reflected heavy gains—with \$24 billion spent to incarcerate nonviolent offenders nation-wide,²⁶ and a total Oklahoma budget for 2000 of nearly \$400 million.²⁷ Thus, the nonviolent offender population would reflect an expenditure of approximately \$240 million. Nearly four million offenders are under some type of community-based supervision.²⁸ By 1998, one in thirty-four adults—or about three percent of this country's adult population—were incarcerated or under parole or community supervision.²⁹

The Oklahoma legislature responded to public demand to “get tough” on crime,³⁰ and in 1997, passed Truth-in-Sentencing legislation that would impose rigid guidelines on punishment practices—taking sentencing discretion away from

18. *Id.*

19. Chuck Evan, *Corrections Officials Want Budget to Keep Pace with Number of Inmates*, TULSA WORLD, March 4, 2001 at A1.

20. See JAN M. CHAIKEN, U.S. DEP'T OF JUSTICE, CORRECTIONAL POPULATIONS IN THE UNITED STATES 6 (1997). See also OKLAHOMA STATE BUREAU OF INVESTIGATION, 1998 UNIFORM CRIME REPORT 1-3 (1998). See *Alcohol and Crime: An Analysis of National Data on the Prevalence of Alcohol Involvement in Crime*, BUREAU OF JUSTICE STATISTICS vi (U.S. DEPARTMENT OF JUSTICE 1998). “Among the 5.3 million convicted offenders under the jurisdiction of correction agencies in 1996, nearly 2 million, or about 36%, were estimated to have been drinking at the time of the offense. The vast majority, about 1.5 million, of these alcohol-involved offenders were sentenced to supervision in the community.” *Id.* at vi.

21. See generally Jeremy Travis, *New Challenges in Evaluating Our Sentencing Policy: Exploring the Public Safety Nexus*, Address to the National Workshop on Sentencing and Corrections, June 1, 2000. By the end of 1998, “nearly two million people are in prisons or jails. . .” *Id.* at 2.

22. Nonviolent offenders for the purposes of the statistics encompass drug violations, larceny and white collar crimes.

23. See *supra* note 17. See also OKLAHOMA STATE BUREAU OF INVESTIGATION, 1998 UNIFORM CRIME REPORT 1-3 (1998); U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, KEY CRIME & JUSTICE FACTS AT A GLANCE (2000) available at <<http://www.ojp.usdoj.gov/bjs/glance.htm>>.

24. *Id.*

25. See *supra* note 17.

26. Chuck Ervin, *Corrections Officials Want Budget to Keep Pace With Number of Inmates*, TULSA WORLD, March 4, 2001 at A1.

27. See *supra* note 26. “The state's inmate population has more than doubled since 1989, from 11,274 to 22,885—a 102 percent increase. During that same 12 year period, the department's budget has increased 177 percent—from \$131 million to \$364 million.” *Id.* For the next fiscal year, the Department of Corrections requested an additional \$146 million in testimony before the Senate Appropriations Sub-committee for Public Safety and Judiciary.

28. See *supra* note 21 at 2.

29. Doris L. MacKenzie, *Sentencing and Corrections in the 21st Century: Setting the Stage for the Future*, 5 NATIONAL INSTITUTE OF JUSTICE (2000).

30. See *Oklahoma Revamps Justice System*, NATIONAL CONFERENCE OF STATE LEGISLATURES MAGAZINE, September 1, 1997.

both judges and juries.³¹ Unfortunately for lawmakers, this was not the solution their constituents wanted.³² Deemed a “political albatross,”³³ the legislature responded to public pressure, and in 1999, repealed the Truth-in-Sentencing law a day before it was to go into effect.³⁴ In its stead, the legislature created comprehensive legislation that would deal with crimes at both ends of the criminal spectrum.³⁵ In a three-prong approach, the legislature enacted measures that in combination: 1) required criminals convicted of the most serious offenses, the “Eleven Deadly Sins,”³⁶ to serve at least 85% of their sentence before becoming eligible for parole; 2) retained the emergency prison-population cap law that created provisions for eligible inmates with “good-time” credits to receive early release when the inmate prison count reaches 95% capacity; and 3) created the community sentencing program.³⁷

Calling the final legislative package “a common-sense conclusion” to the sometimes heated debate, Senate President Pro Tempore Stratton Taylor said:

We got rid of a well-intentioned but flawed law, and replaced it with one that’s tough on crime and hard on criminals. We’re locking up the bad guys for a very long time and sending the message that when you do the crime in Oklahoma, you will do hard time behind bars with no paroles or early releases. It’s good news for the law-abiding citizens of our state and bad news for the criminal elements of our society.³⁸

The debate was not without controversy.³⁹ Senator Odilika Dank was concerned that the legislation would free too many nonviolent offenders without proper punishment, particularly those convicted of certain types of drug crimes, burglary and other related crimes.⁴⁰ “Crime victims deserve more from the legislature than empty talk and hollow legislation,”⁴¹ Citing a Harvard economist, Dank said that the average criminal’s activities cost society almost \$54,000 annually, and “[w]e should look at the cost of crime to the public, not the cost of

31. Chuck Ervin, “*Truth*” Bill Hits a Hurdle, TULSA WORLD, June 19, 1999, available at 1999 WL 5404351. Prosecutors and law enforcement groups, including the Oklahoma Sheriffs’ Association, were also opposed to the Truth-in-Sentencing bill. It was perceived that the public was particularly averse to a mandatory sentencing guideline grid replacing the jury process. *Id.* . See also *Getting Tough: Lawmakers Should Repeal “Truth” Law*, Editorial, TULSA WORLD, June 29, 1999, available at WL 5405164.

32. *Sentencing Law Repealed; Community Programs Established*, OKLAHOMA LEGISLATIVE REPORTER, June 30, 1999, available at <<http://www.obiznews.com/includes/front630.htm>> at 1.

33. See also Marie Price, *Truth-in-Sentencing Law Repealed*, THE JOURNAL RECORD, July 1, 1999, available 1999 WL 984446885. Brian Ford, *Legislature Repeals Law: Bill Tough On 11 Crime Passes*, TULSA WORLD, July 1, 1999, available at 1999 WL 5405466.

34. *Id.*

35. See *supra* note 32.

36. Referencing the “Eleven Deadly Sins” as described in OKLA. STAT. tit. 21, § 13.1 (1999).

37. See *supra* note 32 at 5.

38. Brian Ford, *Legislature Repeals Law: Bill Tough on 11 Crime Passes*, TULSA WORLD, July 1, 1999, available at 1999 WL 5405466.

39. See *id.* See also *supra* note 32 at 3.

40. See *supra* note 32 at 5.

41. *Id.* at 5.

incarceration.”⁴²

But most agreed that the community sentencing program embraced the concept of therapeutic justice for those nonviolent offenders who required substance abuse treatment to interrupt the criminal cycle. This inmate segment represented a huge portion of the prison population, who, predictably, served their time, then returned to their communities and began committing more crime to support their drug habits, only to ultimately re-enter the criminal justice system. “By far the greatest percentage of felony convictions in Oklahoma are drug and alcohol related, totaling 42 per cent of all convictions.”⁴³ Community sentencing, in contrast, would allow those convicted of nonviolent offenses to serve their time in the community while undergoing supervised treatment, education or other programs with the ultimate goal of reducing recidivism. Senator Cal Hobson praised the bill by stating that “it would change lives.”⁴⁴

Legislators provided funding for a ten-county pilot project,⁴⁵ under which local community sentencing planning councils would design a system of supervised sanction-based programs and treatments for nonviolent offenders.⁴⁶ The legislature, encouraged by Governor Keating,⁴⁷ has since extended the community sentencing program state-wide, and budgeted \$5.5 million for the 2001 fiscal year.⁴⁸ Both the legislature and the Department of Corrections were somewhat disappointed with the initial use of the new system, but attributed this to the newness of the program.⁴⁹ Justin Jones, Deputy Director for Pardons and Paroles and the Community Sentencing Division, reported that there were approximately 900 offenders across the state serving community sentences, with a potential

42. *Id.*

43. See *supra* note 20. See also Chuck Ervin, *Corrections Officials Want Budget to Keep Pace With Number of Inmates*, TULSA WORLD, March 4, 2001. “According to Senate staff research, by far the greatest percentage of felony convictions in Oklahoma are drug or alcohol related, totaling 42 percent of all convictions. Drug possession accounts for 20.2 percent; drug distribution, 11.3 percent and felony DUI, 10.5 percent.” *Id.*

44. See *supra* note at 4. See also *More Misery Than War: Clinton Drug Official Says Treatment Is the Answer*, NEW YORK TIMES, January 8, 2001 at A2. Reflecting upon his five years as the government’s top drug officer, Gen. Barry McCaffrey remarked that legislatures must establish intensive drug treatment programs to save tax dollars and solve violent crime. “The solution to drug abuse and its \$110 billion annual consequences, is to engage in more coherent, rational ways to [treat] the chronically addicted as we encounter them in our communities.” *Id.*

45. Ten counties were awarded pilot project status with funding of \$2.5 million for a four month trial period. Marie Price, *Truth-in-Sentencing Law Repealed*, THE JOURNAL RECORD, July 1, 1999, available 1999 WL 984446885. Tim Hoover, *Program Looks to Rehabilitate Felons*, TULSA WORLD, February 13, 2000 at A1. (Describing the Tulsa County portion of the pilot project.)

46. OKLA. STAT. tit. 22, § 988.5–988.7 (Supp. 2000).

47. Keating explained that he approved community sentencing with the “idea of insisting that first-time drug offenders who have not had any previous brush with the law not go to a \$15,000-a-year cell.” *Keating Discusses 2001 Agenda*, TULSA WORLD, December 30, 2000 at A1. See also Marie Price, *Keating Targets Growth, Education*, THE JOURNAL RECORD, February 6, 2001, available at 2001 WL 4522204.

48. *Id.*

49. Chuck Evans, *Counties Exploring Alternatives to Jail*, TULSA WORLD, March 6, 2001 at A1. Testimony before the Senate Appropriations Subcommittee on Public Safety and Judiciary. *Id.* Brian Ford, *Keating Discusses 2001 Agenda*, TULSA WORLD a, December 30, 2000, available at 2000 WL 6808885. Additional reports suggested a program level of 1,934 by June 30, 2001. *Id.*

increase to 4,000 by year-end.⁵⁰

II. REFORM—BEYOND OKLAHOMA

Over the last few decades, lawmakers began to acknowledge that the traditional “lock ‘em up and throw away the key” approach was a dismal failure—both socially and economically. “After a quarter century of changes, there is no longer anything that can be called ‘the American system’ of sentencing and corrections.”⁵¹ Community sentencing, while a new concept in Oklahoma, was not new nation-wide. As early as the 1980s, there slowly developed a desirability for intermediate sanctions for offenders—something short of the severity of incarceration, but more intrusive than probation.⁵² As states began to experiment with various approaches, models were developed and followed. Leading criminologists, Norval Morris and Michael Tonry, reported in 1990 that United States judges “faced a polarized choice between prison and probation, with a near vacuum of punishment options between these extremes.”⁵³ This study was significant in guiding states to a sentencing framework that was based upon a continuum of sentences; including fines, community service, house arrest, treatment, intensive probation, and electronic monitoring.⁵⁴ The authors further argued that the effectiveness of the program, both with regard to serving the victims and the justice system, was rigorous enforcement.⁵⁵ The need to deliberately tailor the sanction to the offender based on the seriousness of the crime was also essential.⁵⁶ Georgia was the first state to gain national publicity for its program.⁵⁷ Illinois, Massachusetts, New Jersey, and Florida followed with programs of their own.⁵⁸

Success was mixed, but a groundswell of support emerged, and one report suggested that, “state legislators were virtually falling over each other” in efforts to address intermediate sanctions in their states.⁵⁹ More recently, the use of community or intermediate sanctions has grown significantly, and many states have adopted mandatory sentencing guidelines (such as the type discarded by the Oklahoma legislature) in conjunction with the intermediate sanction programs.⁶⁰

50. Chuck Evans, *Counties Exploring Alternatives to Jail*, TULSA WORLD, March 6, 2001 at A1. Testimony before the Senate Appropriations Subcommittee on Public Safety and Judiciary.

51. Michael Tonry, *The Fragmentation of Sentencing and Corrections in America*, 1 SENTENCING & CORRECTIONS (September 1999).

52. Joan Petersilia, *A Decade of Experimenting With Intermediate Sanctions: What Have We Learned?*, 79 NATIONAL INSTITUTE OF JUSTICE, PERSPECTIVES ON CRIME AND JUSTICE: 1997-1998 LECTURE SERIES (1998).

53. NORVAL MORRIS & MICHAEL TONRY, BETWEEN PRISON AND PROBATION: INTERMEDIATE PUNISHMENTS IN A RATIONAL SENTENCING SYSTEM 5 (1990).

54. *Id.*

55. *Id.*

56. *Id.*

57. *See supra* note 52 at 86.

58. *See supra* note 52 at 89.

59. Tom Clear & Paul Hardyman *The New Intensive Supervision Movement*, CRIME AND DELINQUENCY 36, 42-61 (1990).

60. Michael Tonry, *Intermediate Sanctions in Sentencing Guidelines*, 23 Crime J (1998).

By 1994, most states had adopted some type of intermediate sanctions laws.⁶¹ By 1997, North Carolina, Pennsylvania and Ohio had increased state funding based on preliminary studies.⁶² Programs were both diverse and creative. Boston created a police-probation partnership, called Operation Night Light that includes a collaborative community-based approach.⁶³ The state of Washington created "SMART," Supervision Management and Recidivist Tracking, a program similar to Boston with equal success.⁶⁴ Both California and Wisconsin have developed comprehensive programs that have shown significant success when community sentencing provides active supervision coupled with extensive treatment programs.⁶⁵ Oregon, Indiana, and Pennsylvania have demonstrated substantial financial benefits, both by reducing supervision costs and avoiding prison expansion.⁶⁶

But success has not been easy or automatic.⁶⁷ States have had to experiment, and have found that success is factored by elements of structure, funding, personnel—and the commitment of the justice system and the community.

III. "THE ACT": A USER-FRIENDLY OVERVIEW OF COMMUNITY SENTENCING IN OKLAHOMA

A. *Determining Eligibility—The Threshold Inquiry*

In order to be eligible for a community sentence, an offender must have been convicted or entered a plea of guilty or *nolo contendere* to a nonviolent felony offense committed on or after July 1, 1999.⁶⁸ The offender must be eligible for probation through either a deferred or suspended sentence.⁶⁹ The most serious crimes, designated the "Eleven Deadly Sins," are an absolute bar to eligibility for community sentencing.⁷⁰

61. See Dale Parent, Terence Dunworth, Douglas McDonald, & William Rhodes, *Key Legislative Issues in Criminal Justice: Intermediate Sanctions*, NATIONAL INSTITUTE OF JUSTICE, RESEARCH IN ACTION (1997).

62. See *supra* note 52 at 93.

63. See *supra* note 52 at 95.

64. See *id.*

65. See *id.* at 95.

66. Oregon records indicate costs of \$50.06 per day for incarceration, compared to \$10.20 per day for intensive community supervision. Pennsylvania reports saving an estimated \$132 million for prison expansion. Indiana reported savings of almost \$4 million in state prison cost savings after 11 years of operations. COMMUNITY CORRECTIONS (1997). See also Lawrence W. Sherman, Denise C. Gottfredson, Doris L. Mackenzie, John Eck, Peter Reuter, & Shawn D. B. Bushway, *Preventing Crime: What Works, What Doesn't, What's Promising*, NATIONAL INSTITUTE OF JUSTICE, RESEARCH IN BRIEF (July 1998).

67. Michael Tonry, *The Fragmentation of Sentencing and Corrections in America*, SENTENCING & CORRECTIONS 1 (September 1999). See Joan Petersilia, *A Decade of Experimenting With Intermediate Sanctions: What Have We Learned?*, 79 NATIONAL INSTITUTE OF JUSTICE, PERSPECTIVES ON CRIME AND JUSTICE: 1997-1998 LECTURE SERIES (1998).

68. OKLA. STAT. tit. 22, § 988.18 (Supp. 2000). Any jurisdiction that had not established a community sentencing system through the pilot program, has been mandated to adopt a single or multi-county system.. OKLA. STAT. tit. 22, § 988.4 (Supp. 2000).

69. OKLA. STAT. tit. 22, § 991a (Supp. 2000).

70. OKLA. STAT. tit. 21, § 13.1 (Supp. 2000); OKLA. STAT. tit. 22, § 988.2 (A) (8) (Supp. 2000). First

A third eligibility determination is made through a special optional provision that further screens out statutorily defined violent offenses,⁷¹ and then allows the district attorney to recommend a waiver that must be memorialized in the court record.⁷² One exception to this provision is the Driving Under the Influence statute that allows a suspended sentence, without district attorney approval, for an offender with multiple Driving Under the Influence offenses.⁷³ This option essentially also allows repeat offenders into the pool of eligibility.

B. Assessment—Qualifying the Eligible Offender Pool

Once the defendant has been deemed eligible under the initial screening process, the Act requires an assessment that evaluates the defendant's risk to re-offend.⁷⁴ The assessment of choice is the Level of Services Inventory "LSI" that measures the defendant's deficiencies and risk for recidivism, and then weighs those factors against the needs for rehabilitative treatment and the availability of appropriate treatments.⁷⁵ The LSI is administered by trained personnel in a clinical environment, and gathers information in 54 elements that predict risk and need.⁷⁶ The resulting score puts the defendant in a low, moderate or high range. The Act has provided that only offenders scoring in the moderate range (19-28) of the risk score will be eligible.⁷⁷ However, the Act also infers, and some have argued, that offenders scoring outside the moderate range may be eligible for a community sentence, but the services cannot be provided to the offender through the use of state funds.⁷⁸ The prevailing theory is that those scoring in the

degree murder, robbery with a dangerous weapon, first degree rape, first degree arson, first degree burglary, bombing, crimes against children as provided in OKLA. STAT. tit. 10 § 7115 (1999), forcible sodomy, child pornography, child prostitution, and lewd molestation are ineligible.

71. *See id.*

72. OKLA. STAT. tit. 22, § 988.12 (A); § 991c (F) (Supp. 2000).

73. OKLA. STAT. tit. 47, § 11-902 (Supp. 2000).

74. OKLA. STAT. tit. 22, § 988.2 (A)(8); § 988.17 (A); § 988.18 (A) (B) (Supp. 2000).

75. *See Kelly Vance, Adult Offender Standardized Assessment Quality Assurance: A Primary Building Block of Community Sentencing*, 4 COMMUNITY SENTENCING DIGEST (Sept. 2000). *See also* Paul Gendreau, Claire Goggin, Frances T. Cullen & Donald A. Andrews, *The Effects of Community Sanctions and Incarceration on Recidivism*, FEDERAL PROBATION 10, 13 (1999). In discussing the results of risk-assessment models, the authors commented that "[t]he addition of this body of evidence to the 'what works' debate leads to the inescapable conclusion that, when it comes to reducing individual offender recidivism, the 'only game in town' is appropriate cognitive-behavioral treatments which embody known principles of effective intervention." *Id.* *See generally* Harry N. Boone, Jr., & Betsy A. Fulton, *Implementing Performance-Based Measures in Community Corrections*, NATIONAL INSTITUTE OF JUSTICE, RESEARCH IN BRIEF

76. The 54 questions encompass: criminal history, educational history, employment history, financial status, family and relationship status, past and present alcohol and drug use, companions and associates, leisure time activities, mental health history and statute (not a formal evaluation), and attitude and orientation. Kelly Vance, *Adult Offender Standardized Assessment Quality Assurance: A Primary Building Block of Community Sentencing*, 4 COMMUNITY SENTENCING DIGEST (Sept. 2000). *See also* Community Sentencing Division, Department of Corrections, *A Preliminary Report to the Legislature of Statewide Offender Assessment Data in Oklahoma*, 1 (1998). For the specific instrument used, *see* Donald A. Andrews, James Bonata, *Level of Service Inventory-Revised* (January 1997).

77. OKLA. STAT. tit. 22, § 988.2 (A)(B); 988.17 (A); 988.18(B) (Supp. 2000). *See also* 55 Okla. Att'y Gen. No. 55 (Oct. 31, 2000).

78. OKLA. STAT. tit. 22, § 988.18 (E) (Supp. 2000). For example, the services may be paid by the offender, or the local planning council may choose to provide funding. Similarly, offenders convicted

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. The scoring range is based upon actuarial tables that measure or predict recidivism.⁷⁹ The LSI cannot be waived,⁸⁰ and offenders who either refuse or are unable to submit to the LSI are precluded from community sentencing.⁸¹ The LSI is further broken into a needs sub-scale of ten elements that give the evaluator insight into the criminogenic factors of the offender's life. This portion of the LSI provides guidance in recommending the individualized treatment program.⁸² A third sub-scale evaluates the protective factor that is determinative in assessing the pro-social or positive influences in an offender's life.⁸³ Re-assessment is also a requirement of the supervision plan.⁸⁴

The Adult Substance Use Survey, the ASUS, is a self-evaluation vehicle that is completed by the offender on his/her historical use of alcohol or drugs. The ASUS is reviewed by the evaluator and combined with other information to complete the report that is required for the court.⁸⁵ Although this specific evaluation instrument is not required by the Act, it is an integral part of the information process, and a natural out-growth of the needs factor in the LSI. Since drug and alcohol offenses compose at least half of the first-time offender nonviolent offenses,⁸⁶ this assessment tool is not only appropriate, but may be a critical part of the evaluation process for both the system and the offender.

The court is required to order the LSI, but the court is not precluded from ordering any other assessment that may be deemed helpful or determinative.⁸⁷ Particularly in the optional eligibility offender category, the court may wish to also order a Pre-Sentence Investigation report. The PSI is conducted by the Department of Corrections, thus providing an intensive evaluation assessment from a different perspective.

Risk-based assessments have long been both an information and classification tool used in correctional determinations.⁸⁸ Now, as used in the

of a combination of misdemeanor and felony offenses may receive services from a local community sentencing system, provided that the local system agrees in writing to assume the cost of the services. No state funds may be used for misdemeanor offenses. OKLA. STAT. tit. 22 § 988.19 (B) (2000).

79. See *supra* note 75.

80. OKLA. STAT. tit. 22, § 988.17(A) (Supp. 2000).

81. OKLA. STAT. tit. 22, § 988.18 (D) (Supp. 2000).

82. See *supra* note 75.

83. Kelly Vance, *Adult Offender Standardized Assessment Quality Assurance: A Primary Building Block of Community Sentencing*, 4, 5 COMMUNITY SENTENCING DIGEST (Sept. 2000). Should the offender be placed in the community sentencing program, the score for the Protective Factor should increase, reflecting positive change as part of treatment outcome. *Id.*

84. OKLA. STAT. tit 22, § 988.18 (Supp. 2000).

85. The need to address alcohol and drug abuse is merited by the high level of drug and alcohol use/abuse by offenders. See *supra* note 42. OKLAHOMA STATE BUREAU OF INVESTIGATION, 1998 UNIFORM CRIME REPORT 1-3 (1998).

86. *Id.* See also Michael & Mary Lynch, *Intermediate Sanctions*, 20 CRIME AND JUSTICE 99 (1996). The paper discusses intermediate sanctions, but suggests that these sanctions show the greatest promise in programs that address drug rehabilitation.

87. OKLA. STAT. tit. 22, § 988.17 (A) (Supp. 2000). The statute reads "or any other approved assessment." *Id.*

88. Michael Tonrey, *The Fragmentation of Sentencing and Corrections in America*, 5 SENTENCING

context of indeterminative sentencing, the “individualized assessments of risk are seen as being as much a means to achieve public safety as to facilitate offender rehabilitation. Conditions imposed – and—enforced will often relate to minimizing the particular risk an offender presents to the community.”⁸⁹

Once evaluated, the assessments are incorporated into the Supervision and Inventory Report. The SIR is the reporting instrument that provides the individualized plan for the supervision and treatment of the offender. This plan is forwarded to the court, the district attorney and the offender and offender’s counsel. Once again the goal of the plan is to direct the offender into the most appropriate treatment and rehabilitation to end the offender’s criminal involvement and prevent re-offending. Sentencing requirements, including the possibility for community sentencing, are responsive to these findings.

C. Court Procedures—Requirements of the Act Merge with the Discretion of the Court

The offender must first be found guilty or enter a plea of guilty or *nolo contendere*.⁹⁰ Prior to sentencing, the court must have obtained the LSI,⁹¹ which may have been completed before the plea. The court may have ordered any other assessment including the ASUS or PSI.⁹² The sentencing court must then order a deferred or suspended sentence as prescribed by law.⁹³

It is at this point that the court may order community sentencing as a condition of the deferred or suspended sentence.⁹⁴ The court may order any condition, or combination of conditions it deems appropriate to best achieve positive results. Guidance is provided by the statutorily prescribed sentencing powers of the court,⁹⁵ and the services provided through the provisions and direction of the Local Community Sentencing Planning Council.⁹⁶

Community sentencing is not an entitlement. Judges are granted complete discretion to decline to impose a community sentence—even if the offender is

& CORRECTIONS, September 1999.

89. *See id.* at 4-5.

90. OKLA. STAT. tit. 22, § 988.18 (Supp. 2000).

91. OKLA. STAT. tit. 22, § 988.18 (B) (Supp. 2000).

92. *See id.*

93. OKLA. STAT. tit. 22, § 988.19 (A); § 990a-1.1 (Supp. 2000).

94. OKLA. STAT. tit. 22, § 988.19(A) (Supp. 2000).

95. OKLA. STAT. tit. 22, § 991a “Sentencing Powers of the Court” (Supp. 2000); OKLA. STAT. tit. 22, § 991c “Deferred Judgment Procedure” (Supp. 2000).

96. The Act provides detailed guidelines and tools for the local community planning council to develop comprehensive resources for rehabilitation and treatment programs. OKLA. STAT. tit. 22, § 988.8 (A) (Supp. 2000). This includes structure, funding mandates and organizational and administrative guidelines. While these features are extremely important, the details of the management of the local community sentencing system will not be addressed in this paper, but that should not be viewed as determination to its importance. There is no question that the effectiveness and success of the community sentencing system depends upon the collaborative elements of each “spoke” in the criminal justice “wheel.” Evidence of this fact, is the representation on the local planning councils of judges, prosecutors, public defenders, court administrators, defense counsels, treatment providers, and local community members. OKLA. STAT. tit. 22, § 988.5 (B)(C) (Supp.2000).

eligible, and all of the statutory elements are met.⁹⁷ Further, offenders gain no special rights of appeal to avoid a term of incarceration if it is prescribed by law for the offense,⁹⁸ or to appeal the court's selection of any specific treatment or punishment.⁹⁹

Any offender ordered to participate in the local community sentencing system must be advised of all the conditions of the specific programs or treatments to which he/she has been assigned.¹⁰⁰ The offender acknowledges notification by signing the "Rules and Conditions of Community Sentence" in open court.¹⁰¹

While the court has the discretion to order a community sentence, it is somewhat constrained by the legislature's imposed mandate to consider restitution to the victim, when applicable.¹⁰² This is responsive to the restorative nature of the community sentencing concept.

Responding to the legislature's financial motivation for community sentencing, the court must also consider the most cost-effective treatment for the specifically-targeted offender's needs.¹⁰³ It thus behooves the sentencing court, the district attorney, and defense attorneys, in conjunction with the local community system, to be fully cognizant of the local correctional resources and to utilize the resources in the most efficient manner.¹⁰⁴ The value of the local administrator's investigation of potential resources, and the collection of data to determine both accountability and success rates of the resources, cannot be underestimated.¹⁰⁵

D. Sentencing Options of the Court—Matching Resources Available with the Individual Offender

Depending upon the resources that have been made available by the local community sentencing system,¹⁰⁶ the court has an almost inexhaustible combination of rehabilitative and punishment options at its disposal. The court is further guided by specific statutes that enumerate both narrow and broad opportunities—some that require specific punishment for specific crimes (i.e. ignition locks for a Driving Under the Influence offense, payment to a victim's fund).¹⁰⁷ The Act instructs local systems to have available services that provide: community service, with or without compensation for the offender; substance

97. OKLA. STAT. tit. 22 § 988.22 (D)(Supp. 2000).

98. OKLA. STAT. tit. 22 § 988.2 (D) (Supp. 2000).

99. *Id.*

100. OKLA. STAT. tit. 22 § 988.22 (A (C) (Supp. 2000).

101. OKLA. STAT. tit. 22 § 998.22 (A) (Supp. 2000). Part of this procedure is the "Rules and Conditions of Community Sentencing" form that must be signed by the defendant in open court. Forms are developed by the local administrative office of the court per OKLA. STAT. tit. 22 § 988.17 (Supp. 2000).

102. OKLA. STAT. tit. 22 § 991a (C) (Supp. 2000).

103. OKLA. STAT. tit. 22 § 988.10 (B) (Supp. 2000).

104. OKLA. STAT. tit. 22 § 988.10 (A) (Supp. 2000).

105. OKLA. STAT. tit. 22 § 988.13 (Supp. 2000) (Requiring the local administrator to gather data.).

106. OKLA. STAT. tit. 22 § 988.13 (Supp. 2000) (Requiring the local administrator to gather data.).

107. OKLA. STAT. tit. 22 § 991a (A) (Supp 2000); OKLA. STAT. tit. 22, ' 991c (Supp. 2000).

abuse treatment and the availability for periodic drug testing following treatment; various levels of supervision; education and literacy programs; employment opportunities and job skills training; enforced collections of fees, payments and restitution; and the availability of restrictive housing or county jail for limited disciplinary sanctions.¹⁰⁸

Also imposed upon the offender, through provisions of the Act, is a variety of fees that are separate from any fines, restitution, or program reimbursement costs imposed by the sentencing court.¹⁰⁹ As part of the terms and conditions of the community sentence, the offender must pay a supervision fee,¹¹⁰ an administrative fee,¹¹¹ and the court is required to assess court costs.¹¹² Inability of the offender to pay the fees may result in the court waiving the obligation, and cannot deprive the offender of the community sentencing programs.¹¹³

E. Supervision—Authority, Accountability, and Time-Line

The defendant, once given a community sentence, is now designated an offender.¹¹⁴ The supervision process is initiated as part of the sentencing procedure before the court.¹¹⁵ The offender becomes the responsibility of the local administrator,¹¹⁶ but may be supervised, based upon the conditions of the community sentence, by the Department of Corrections, a local community sentencing system qualified provider, or any qualified person or entity designated by the court. The levels of supervision are provided in accordance with the level and duration specified by the court. Research has shown that sentences should be intensive and behavioral in nature, and at least initially, consume 40 to 70% of the offender's time while in the program.¹¹⁷ For the most intense time commitment programs, a three to nine months duration seems to be most effective.¹¹⁸

Active supervision may not exceed three years in the community sentencing program.¹¹⁹ However, the overall sentence itself, still falls under the auspices of either the deferred or suspended sentence originally imposed by the court as prescribed by law. In addition, any monetary obligation, such as restitution, fines

108. OKLA. STAT. tit. 22, § 988.8(A) (2000).

109. OKLA. STAT. tit. 22 § 988.9 (C) (Supp. 2000).

110. OKLA. STAT. tit. 22 § 988.9 (A) (Supp. 2000).

111. OKLA. STAT. tit. 22 § 988.9 (B) (Supp. 2000).

112. OKLA. STAT. tit. 22 § 988.9 (C) (Supp. 2000).

113. OKLA. STAT. tit. 22 § 988.8 (C); 988.9 (A) (Supp. 2000).

114. OKLA. STAT. tit. 22 § 988.12(A) (Supp. 2000). Part of the restorative process is to use the offender designation, instead of inmate or criminal. It is presumed that status is part of the overall view of the program, and the potential for change.

115. OKLA. STAT. tit. 22, § 990a-1.1; 988.19 (Supp. 2000).

116. OKLA. STAT. tit. 22, § 988.19 (A) (Supp. 2000).

117. *Public Protection through Offender Risk Reduction: Putting Research into Practice*, PERSPECTIVE ON CRIME AND JUSTICE, DEPARTMENT OF JUSTICE (1998). See also Kerry Murphy Healey, *Case Management in the Criminal Justice System*, NATIONAL INSTITUTE OF JUSTICE, RESEARCH IN ACTION 1 (February 1999), for a discussion of the importance of offender supervision and the reliance on case managers for monitoring compliance.

118. See *id.*

119. OKLA. STAT. tit. 22 § 988.22 (E) (Supp. 2000).

or assessed fees do not end with the end of active supervision, but continue until all obligations are fulfilled.¹²⁰

F. Violations—One Step Forward, Two Steps Back

As with any rehabilitative approach to crime, the potential for an offender to take a miss-step is a given. The Act empowers the court with a broad continuum of sanctions that is designed to re-gain the offender's compliance with the community sentence in a manner that is both immediate and effective.¹²¹ The court may impose a standing court order that provides specific non-liberty-depriving sanctions on the offender to be instituted by the local administrator, through the supervision process.¹²² Action is taken based upon the seriousness of the violation of probation, and the court may order any punishment available by law, including any service provided through the local community sentencing system.¹²³

Sanctions that rise to the level of incarceration, or liberty depriving sanctions, must be imposed by the court, through the modification procedure, and cannot exceed thirty days.¹²⁴ Offenders are given day-for-day credit for incarcerative time served in the event they are ultimately imprisoned as a result of revocation of the community sentence.¹²⁵

Modifications to the community sentence may also be made at any time through proper motion procedures.¹²⁶ Even though a modification is potentially most likely to lead to sanctions, the court may also consider extending an incentive through a reduction or modification of a community sentence to acknowledge significant or exceptional performance of the offender.¹²⁷

G. Revocation or Acceleration of a Sentence—Non-Compliance Has Serious Consequences

During the term of the community sentence, the court may revoke a suspended sentence or accelerate a deferred sentence.¹²⁸ Here, the court follows traditional procedures proscribed within the statutes, however no punishment may exceed the maximum punishment allowed by law for the offense.¹²⁹ Revocation should not be undertaken through the modification procedure,¹³⁰ but should occur with the full scope of rights attendant to the revocation procedure. It should be noted that this is potentially the “small-print” provision of the rules and conditions

120. OKLA. STAT. tit. 22 § 988.22 (E); 991f (Supp. 2000).

121. OKLA. STAT. tit. 22 § 988.2 (Supp. 2000).

122. OKLA. STAT. tit. 22 § 988.20 (B) (Supp. 2000).

123. OKLA. STAT. tit. 22 § 988.20 (A) (Supp. 2000).

124. OKLA. STAT. tit. 22 § 988.20 (E)(Supp. 2000).

125. OKLA. STAT. tit. 22 § 988.20 (A) (Supp. 2000).

126. OKLA. STAT. tit. 22 § 988.19 (C); 988.20 (A) (Supp. 2000).

127. OKLA. STAT. tit. 22 § 988.20 f(A)(B)(C) (Supp. 2000).

128. OKLA. STAT. tit. 22 § 988.19 (I) (Supp. 2000).

129. OKLA. STAT. tit. 22 § 988.19 (F) (Supp. 2000).

130. OKLA. STAT. tit. 22 § 988.19 (I); 991b (A) (Supp. 2000).

statement. The offender must understand that non-compliance with the community sentence can have very significant consequences—including imposition of the maximum sentence allowed by law for the crime committed, in the event of an acceleration of a deferred sentence.¹³¹ Even once active supervision has ended, violations of the sentence, including failure to pay restitution, may be grounds for revocation or acceleration.¹³²

H. Community Sentence Completion—New Beginnings and Second Chances

Upon completion of all the provisions of the community sentence, the court is informed, and follows the closure procedures of the suspended or deferred sentence. Keeping in mind that a community sentence functions as a condition of a deferred or suspended sentence, the court must determine that all facets of the original sentence have been satisfied.¹³³ This includes any monetary obligations that must be paid,¹³⁴ particularly restitution.

Satisfaction of the terms of a deferred sentence allows the court to discharge the offender's judgment of guilt, expunge the record of the plea,¹³⁵ and dismiss the charge with prejudice to any further actions.¹³⁶ References to the offender are deleted on the court docket sheet.¹³⁷

In the case of a suspended sentence, the offender is deemed to have completed or discharged the sentence when the community sentencing conditions have been satisfied. The offender is left with a felony conviction on his/her record, but the offender has been spared the disadvantages of incarceration, and hopefully has benefited from treatment rehabilitation.

IV. COMMUNITY SENTENCING—A RESOLUTION FOR COMPETING INTERESTS

From a state perspective, the cost-effectiveness of community sentencing can be significant—both in the reduction of individual offender costs of treatment, and in the reduction of prison population and new facilities requirements. There is also the added advantage of offender-paid fees, court costs, fines, and restitution that makes the community sentencing system financially predictable and efficient. As reported to the legislature by Justin Jones, “The average cost of maintaining one person in a community sentencing program for a year is \$959, compared to \$14,235 per person for a year in a minimum security prison. The daily cost is \$2.68 in community sentencing and over \$38 a day in a minimum security prison.”¹³⁸ If these figures are representative, then the taxpayers have been reimbursed for the costs of the criminal justice system.

131. OKLA. STAT. tit. 22 § 988.22 (B)(C); 988.19 (I) (Supp. 2000). *See also* Haynes v. State, 760 P.2d 829 (Okla. Crim. 1988).

132. OKLA. STAT. tit. 22 § 991f; § 988.19 (C) (Supp. 2000).

133. OKLA. STAT. tit. 22 § 988.22 (C) (Supp. 2000).

134. OKLA. STAT. tit. 22 § 988.22 (E); § 988.9 (C) (Supp. 2000).

135. OKLA. STAT. tit. 22 § 991c (C) (Supp. 2000).

136. *See id.*

137. OKLA. STAT. tit. 22 § 991c (C)(1) (Supp. 2000).

138. *See supra* note 50.

The offender who is sentenced to a community sentence is the ultimate “winner.” The opportunity to stay within the community while serving the sentence allows the offender to maintain a family life and continue employment—one offers support, the other provides income and structure. The typical offender is young, single, under-employed, and with social and educational deficiencies.¹³⁹ The offense is most likely to be alcohol or drug related.¹⁴⁰ The stigma of “criminal status” is made minimal by the offender designation, and the opportunity to complete treatment programs allows re-direction.¹⁴¹ Further, those receiving deferred sentences enjoy the ability to start anew with a totally clean record. That is truly “a chance of a lifetime.”

The victim of a crime may initially be the most skeptical about community sentencing. Victims usually expect retribution for the crime, illustrative of the “eye for an eye” mentality. This attitude shows a need for the criminal to have been appropriately punished, and does not play well with the community sentencing restorative and rehabilitative philosophy. Emphasis on the aspects of restitution to the victims as a primary goal, and education of the public regarding the social and economic benefits of community sentencing may be helpful in gaining support. “Receiving only punishment is quite passive and does not demand that the offender take responsibility and repair the harm done” is part of the accountability that has become increasingly popular with victims-interest groups and the general public, according to Professor Emilio C. Viano.¹⁴² In the big picture, lower recidivism benefits society in general—both in terms of reducing criminal activity and freeing state funds for other worthwhile endeavors.

Professor Leena Kurki addressed this new, broad role of community sentencing: “Both restorative and community justice are based in the premise that communities will be strengthened if local citizens participate in responding to crime, and both envision responses tailored to the preferences and needs of victims, communities and offenders.”¹⁴³

139. See JAN M. CHAIKEN, U.S. DEP'T OF JUSTICE, CORRECTIONAL POPULATIONS IN THE UNITED STATES 48 (1997). See also *More Than Three-Quarters of Prisoners Had Abused Drugs in the Past*, Press Release, U.S. DEP'T OF JUSTICE (January 5, 1999), available at <www.ojp.usdoj.gov/bjs/pub/press>.

140. See *supra* note 52. See *Alcohol and Crime: An Analysis of National Data on the Prevalence of Alcohol Involvement in Crime*, BUREAU OF JUSTICE STATISTICS 20 (U.S. DEP'T OF JUSTICE 1998). “On an average day in 1996, an estimated 5.3 million convicted offenders under the supervision of criminal justice authorities. Nearly 40% of these offenders, about 2 million, had been using alcohol at the time of the offense for which they were convicted.” *Id.*

141. Research has shown that offenders respond well to community-based sanctions. The restorative implications of acknowledging culpability are strong at the community level—particularly with restitution sanctions, and victim impact. Thomas Quinn, *Restorative Justice*, Interview with THE NATIONAL INSTITUTE OF JUSTICE JOURNAL, March 1998 (OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE 1998). Offenders also have expressed a high sense of fairness in community-based programs. *Id.*

142. Emilio C. Viano, *Restorative Justice For Victims of Offenders: A Return to American Traditions*, 5, 8 CORRECTIONS TODAY 62 (2000). The author makes a strong case for the return of criminal justice, at least for low-risk offenders, to the local community—a tradition he says is grounded in history and tradition. *Id.*

143. Leena Kurki, *Incorporating Restorative and Community Justice Into American Sentencing and Corrections*, SENTENCING & CORRECTIONS, NATIONAL INSTITUTE OF JUSTICE 1 (September 1999).

With community sentencing, local communities gain greater control over the impact of criminal activity in their own community. Supervision is local—and the potential for quick responses for non-compliance has greater potential. The worst criminals still go to prison.

Even though the tasks of learning a new system have been especially burdensome to local enforcement, district attorneys, and courts; once established, the potential for improved case and docket management is a certainty. Courts benefit through having additional resources for both sentences and sanctions. These tools allow sentencing to be both crime and offender specific.

V. CONCLUSION—OBSERVATIONS AND FRESH STARTS

The community sentencing system is in its infancy in Oklahoma. As with any new program, there is both a learning and utilization “curve” that requires time and education. The commitment to community sentencing has been made by the legislature through the Act, re-enforced by increased funding, and supported by the current governor. Still, the greatest burden for implementing an effective community sentencing system has been placed squarely on the local community sentencing planning councils and their corresponding courts. Creating the bureaucratic structure of a sentencing system of this magnitude is a major task requiring collaboration of law enforcement, state and local correctional offices, public defenders, prosecutors and judges.¹⁴⁴ Couple this with the task of finding and selecting appropriate resources in each community to handle the rehabilitative programs, and training qualified personnel to supervise the offenders, and the burden is significantly heightened. Each layer of the process is a key link in facilitating the success of the program, and the requisite positive outcome for the offenders.

Although the Act provides a relatively specific guide for facilitating community sentencing, there are many nuances that still must be developed.¹⁴⁵ Many parts of the Act must be read in conjunction with other Oklahoma laws, and much has been left for interpretation. Even where provisions are clearly spelled out, the Act is not to be construed as an entitlement for the offender, or a mandate for the judge. Unlike many other jurisdictions, in Oklahoma, community sentencing is a discretionary tool to be applied only to eligible offenders by the judge. Thus, the discretion aspect of community sentencing also plays into the

144. For a thorough discussion of the need for interaction among all criminal justice entities, see generally, Jane Nady Simon, M. Elaine Nugent, John Goerd, Scott Wallace, *Key Elements of Successful Adjudication Partnerships*, BUREAU OF JUSTICE ASSISTANCE, U.S. DEPARTMENT OF JUSTICE 1 (May 1999). “Collaborative efforts that involve the key participants of prosecutor, public defender, and court in the adjudication process are important for mounting an effective response to problems.” *Id.* at 1. Further, similar to the local emphasis of the community sentencing system, the authors state that: “Most adjudication partnerships have been created through grassroots effort by local criminal justice leaders who are committed to improving the operation and effectiveness of local criminal justice systems.” *Id.* at 2. See generally *Critical Elements in the Planning, Development, and Implementation of Successful Correctional Options*, BUREAU OF JUSTICE ASSISTANCE, U.S. DEP’T OF JUSTICE 1 (February 1998).

145. See generally VICKIE S. BRANDT, DEPARTMENT OF CORRECTIONS, COMMUNITY SENTENCING BENCH BOOK 1 (The Honorable Linda G. Morrissey, ed., Oklahoma 2001).

“success” equation. Except in the broadest sense, there is no uniformity through sentencing guidelines imposed—a product of the compromise that struck down mandated guidelines in the repealed truth-in-sentencing act. Recall that the judge has both the discretion to choose to impose a community sentence, and if imposed, has an even broader discretion to select from a wide range of available programs.¹⁴⁶

As stated by Dr. Joan Petersilia:

My experience suggests that judges are the key to successful intermediate sanctions programs. In the communities that I have worked with, judges can either make or break a program. They not only do the initial sanctioning; they also do the revocation of parole and probation. If the guy tests positive and the judge refuses to allocate that jail bed to the violator, the program loses credibility very quickly. Word gets out to offenders immediately that the intermediate program has no teeth.¹⁴⁷

Since the community sentencing program is voluntary, data supporting its success may be difficult to accumulate. There is no question that the program will be only as successful as the enthusiasm with which it is embraced by the local community sentencing councils and their supporting law enforcement and judicial “family.”

As Jeremy Travis, Director of the National Institute of Justice, observed:

Right now, we think that the imposition of sentence is our way of saying to the offender, “We’re done with you.” In the future, we should look at this moment as an opportunity to say, “We’re just beginning to deal with you.” Rather than looking at every crime as a reason to make an arrest, then a prosecution, then a conviction, then a sentence, we should look at every arrest as an opportunity to intervene in the life of the offender, the victim, the community, to convey messages about what we tolerate and what we don’t. . . . [W]e should look at these offenders as challenging our creativity to reduce the risks they pose—and others like them—to society.¹⁴⁸

In the end, the success of community sentencing hinges upon the discretion of judges to both utilize the system *and* to provide aggressive oversight of the supervision process. Community sentencing as a crime resolution tool in Oklahoma will be determined by a demonstrated reduction in recidivism of its offender “graduates.” The accountability of the offenders to the court is critical to both the offender’s compliance with court-ordered sanctions and the credibility of the court. Each contact the community sentencing system has with the offender is a communication and monitoring link. Parallel to this system-offender link, is the crucial need for an organized and efficient collaboration among the community sentencing system entities—district attorney, supervising entity, treatment

146. See generally Don M. Gottfredson, *Effects of Judges’ Sentencing Decisions on Criminal Careers*, NATIONAL INSTITUTE OF JUSTICE, RESEARCH IN BRIEF 1 (U.S. DEP’T OF JUSTICE, November 1999), for an interesting discussion of factors that influence sentencing decisions. Judges in the study, tended to use risk of recidivism as the greatest element in their sentence determination. *Id.* at 2.

147. See *supra* note 52 at 102.

148. Jeremy Travis, *New Challenges in Evaluating Our Sentencing Policy: Exploring the Public Safety Nexus*, address to the National Workshop on Sentencing and Corrections, June 1, 2000.

providers, and the court—as guided by the local administrator. Further, absolute confidence in the management and effectiveness of the supervision entities and treatment agencies is imperative.¹⁴⁹

Community sentencing will not operate in a vacuum. Its best use, and greatest potential for success, will be as one tool, among many, to reach the common criminal justice goals of reducing crime and protecting the public. To critics, and victims of crimes, community sentencing may be perceived as a “soft on crimes” approach. But as one judge stated, “[t]his is not about touchy-feely justice or molycoddling criminals, it’s about what we can do as a society to assist people in not committing crimes.”¹⁵⁰

Oklahoma has given nonviolent offenders the opportunity for self-help in a highly supervised, scrutinized system while remaining in the community, supporting themselves and their families. The alternative of incarceration guarantees a cost to taxpayers that is four to five times higher, and perhaps more troubling, the bleak reality is that most of those incarcerated will commit more crimes when released. Restitution, lower recidivism, and reduced correction costs benefit society in general. There is a chance, here, for fresh starts—both for the state and the offender. Perhaps, community sentencing is really an opportunity for both offenders and Oklahoma criminal justice to get a second chance to make a first impression.

149. The Act also requires an evaluation process for supervision providers. *See* OKLA. STAT. tit. 22 § 988.11 (Supp. 2000).

150. Tim Hoover, *Program Looks to Rehabilitate Felons*, TULSA WORLD, February 13, 2000 at A1.