STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1727 By: Larason

COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; amending 22 O.S. 1991, Section 991a, as last amended by Section 3, Chapter 382, O.S.L. 1992 (22 O.S. Supp. 1992, Section 991a), which relates to sentencing powers of the court; modifying limitation on probation supervision; clarifying scope of nolo contendere pleas; amending 22 O.S. 1991, Section 991c, as last amended by Section 5, Chapter 357, O.S.L. 1992 (22 O.S. Supp. 1992, Section 991c), which relates to deferred judgments; requiring additional conditions for certain defendants for deferred judgments; clarifying scope of nolo contendere pleas; amending 57 O.S. 1991, Sections 512, which relates to parole; modifying exceptions to limitations on parole supervision; amending 57 O.S. 1991, Section 582, which relates to the Sex Offenders Registration Act; modifying scope of act to include certain persons receiving deferred judgments; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 991a, as last amended by Section 3, Chapter 382, O.S.L. 1992 (22 O.S. Supp. 1992, Section 991a), is amended to read as follows:

Section 991a. A. Except as otherwise provided in the Elderly and Incapacitated Victims Protection Program, Section 991a-5 et seq. of this title, when a defendant is convicted of a crime and no death sentence is imposed, the court shall either:

1. Suspend the execution of sentence in whole or in part, with or without probation. The court, in addition, may order the convicted defendant at the time of sentencing or at any time during the suspended sentence to do one or more of the following:

a. to provide restitution to the victim according to a schedule of payments established by the sentencing court, together with interest upon any pecuniary sum

at the rate of twelve percent (12%) per annum, if the defendant agrees to pay such restitution or, in the opinion of the court, if he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family and if the extent of the damage to the victim is determinable with reasonable certainty,

b. to reimburse any state agency for amounts paid by the state agency for hospital and medical expenses incurred by the victim or victims, as a result of the criminal act for which such person was convicted, which reimbursement shall be made directly to the state agency, with interest accruing thereon at the rate of twelve percent (12%) per annum,

c. to engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the person convicted,

d. to pay a reasonable sum into any trust fund, established pursuant to the provisions of Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes, and which provides restitution payments by convicted defendants to victims of crimes committed within the State of Oklahoma wherein such victim has incurred a financial loss,

e. to confinement in the county jail for a period not to exceed six (6) months,

f. to reimburse the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which he is being sentenced, or

g. to repay the reward or part of the reward paid by a certified local crimestoppers program and the Oklahoma Reward System. In determining whether the defendant shall repay the reward or part of the

reward, the court shall consider the ability of the defendant to make the payment, the financial hardship on the defendant to make the required payment, and the importance of the information to the prosecution of the defendant as provided by the arresting officer or the district attorney with due regard for the confidentiality of the records of the certified local crimestoppers program and the Oklahoma Reward System. The court shall assess this repayment against the defendant as a cost of prosecution. "Certified local crimestoppers program" means a crimestoppers program certified by the Office of the Attorney General pursuant to Section 991g of this title. The "Oklahoma General Reward System" means the reward program established by Section 150.18 of Title 74 of the Oklahoma Statutes~~;~~.

However, any such order for restitution, community service, payment to a certified local crimestoppers program, payment to the Oklahoma Reward System, or confinement in the county jail, or a combination thereof, shall be made in conjunction with probation and shall be made a condition of the suspended sentence;

2. Impose a fine prescribed by law for the offense, with or without probation or commitment and with or without restitution or service as provided for in this section;

3. Commit such person for confinement provided for by law with or without restitution as provided for in this section;

4. In the case of nonviolent felony offenses, sentence such person to the Community Service Sentencing Program created pursuant to Section 991a-4 of this title;

5. In addition to the other sentencing powers of the court, in the case of a person convicted of operating or being in control of a motor vehicle while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol or another intoxicating substance, or convicted of operating a motor vehicle while the ability of the person to operate such

vehicle was impaired due to the consumption of alcohol, require such person:

a. to participate in an alcohol and drug substance abuse course or treatment program, pursuant to Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes,

b. to attend a victims impact panel program, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not less than Five Dollars ($5.00) nor more than Fifteen Dollars ($15.00) as set by the governing authority of the program and approved by the court, to the program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee,

c. to both participate in the alcohol and drug substance abuse course or treatment program, pursuant to subparagraph a of this paragraph and attend a victims impact panel program, pursuant to subparagraph b of this paragraph,

d. to install an ignition interlock device, at the person's own expense, approved by the Department of Public Safety, upon every motor vehicle operated by such person and to require that a notation of this restriction be affixed to the person's driver's license at the time of reinstatement of the license. Said restriction shall remain on the driver's license for such period as the court shall determine. The restriction may be modified or removed by order of the court and notice of said order shall be given to the Department of Public Safety. Upon the expiration of the period for the restriction, the Department of Public Safety shall remove the restriction without further court order. Failure to comply with the order to install an ignition interlock device or operating any vehicle

without such device during the period of restriction shall be a violation of the sentence and may be punished as deemed proper by the sentencing court, or

e. beginning January 1, 1993, to submit to electronically monitored home detention administered and supervised by the Department of Corrections, and to pay to the Department a monitoring fee, not to exceed Seventy-five Dollars ($75.00) a month, to the Department of Corrections, if in the opinion of the court the defendant has the ability to pay such fee. Any fees collected pursuant to this subparagraph shall be deposited in the Department of Corrections Revolving Fund. Any order by the court for the payment of the monitoring fee, if willfully disobeyed, may be enforced as an indirect contempt of court; or

6. In addition to the other sentencing powers of the court, in the case of a person convicted of prostitution pursuant to Section 1029 of Title 21 of the Oklahoma Statutes, require such person to receive counseling for the behavior which may have caused such person to engage in prostitution activities. Such person may be required to receive counseling in areas including but not limited to alcohol and substance abuse, sexual behavior problems, or domestic abuse or child abuse problems.

B. When sentencing a person convicted of a crime, the court shall first consider a program of restitution for the victim, as well as imposition of a fine or incarceration of the offender. The provisions of paragraph 1 of subsection A of this section shall not apply to defendants being sentenced upon their third or subsequent to their third conviction of a felony or, beginning January 1, 1993, to defendants being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma Statutes, except as otherwise provided in this subsection. In the case of a person being sentenced for their second or subsequent felony conviction for violation of

Section 11-902 of Title 47 of the Oklahoma Statutes, the court may sentence the person pursuant to the provisions of paragraph 1 of subsection A of this section if the court orders the person to submit to electronically monitored home detention administered and supervised by the Department of Corrections pursuant to subparagraph e of paragraph 5 of subsection A of this section.

C. When sentencing a person convicted of a crime, the court shall consider any victim impact statement if submitted to the court.

D. Probation, for purposes of subsection A of this section, is a procedure by which a defendant found guilty of a crime, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, is released by the court subject to conditions imposed by the court and subject to the supervision of the Department of Corrections. Such supervision shall be initiated upon an order of probation from the court, and shall not exceed two (2) years, except as otherwise provided by law. ~~However, such~~ In the case of a person convicted of a sex offense, supervision shall not be limited to two (2) years. Provided further any supervision provided for in this section may be extended for a period not to exceed the expiration of the maximum term or terms of the sentence upon a determination by the Division of Probation and Parole of the Department of Corrections that the best interests of the public and the releasee will be served by an extended period of supervision. A plea of nolo contendere shall not be deemed to allow a defendant to refuse to discuss offenses related to the plea with the probation officer having supervisory authority over the defendant or, if required by the court, with a treatment counselor.

E. The Department of Corrections, or such other agency as the court may designate, shall be responsible for the monitoring and administration of the restitution and service programs provided for by subparagraphs a, c, and d of paragraph 1 of subsection A of this section, and shall ensure that restitution payments are forwarded to the victim and that service assignments are properly performed.

F. 1. The Division of Probation and Parole of the Department of Corrections is hereby authorized, subject to funds available through appropriation by the Legislature, to contract with counties for the administration of county Community Service Sentencing Programs~~;~~.

2. Any offender eligible to participate in the Program pursuant to this act shall be eligible to participate in a county Program; provided, participation in county-funded Programs shall not be limited to offenders who would otherwise be sentenced to confinement with the Department of Corrections~~;~~.

3. The Division shall establish criteria and specifications for contracts with counties for such Programs. A county may apply to the Division for a contract for a county-funded Program for a specific period of time. The Department shall be responsible for ensuring that any contracting county complies in full with specifications and requirements of the contract. The contract shall set appropriate compensation to the county for services to the Division~~;~~.

4. The Division is hereby authorized to provide technical assistance to any county in establishing a Program, regardless of whether the county enters into a contract pursuant to this subsection. Technical assistance shall include appropriate staffing, development of community resources, sponsorship, supervision and any other requirements set forth in this act~~; and~~.

5. The Department shall annually make a report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House on the number of such Programs, the number of participating offenders, the success rates of each Program according to criteria established by the Department and the costs of each Program.

G. As used in this section:

1. "Ignition interlock device" means a device that, without tampering or intervention by another person, would prevent the defendant from operating a motor vehicle if the defendant has a blood or breath alcohol concentration of five-hundredths (0.05) or greater~~.~~; and

2. "Electronically monitored home detention" means incarceration of the defendant within a specified location or locations with monitoring by means of a device approved by the Department of Corrections that detects if the person leaves the confines of any specified location.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 991c, as last amended by Section 5, Chapter 357, O.S.L. 1992 (22 O.S. Supp. 1992, Section 991c), is amended to read as follows:

Section 991c. A. Upon a verdict or plea of guilty or upon a plea of nolo contendere, but before a judgment of guilt, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation under the supervision of the State Department of Corrections upon the conditions of probation prescribed by the court. The court shall first consider restitution, administered in accordance with the provisions pertaining thereto, among the various conditions of probation it may prescribe. The court may also consider ordering the defendant to engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the defendant. Further, the court may order the defendant confined to the county jail for a period not to exceed ninety (90) days to be served in conjunction with probation. Further, the court may order the defendant to pay a sum into the court fund not to exceed the amount of fine authorized for the offense alleged against the defendant or authorized under Section 9 of Title 21 of the Oklahoma Statutes and an amount for reasonable attorney fee, to be paid into the court fund, if a court-appointed attorney has been provided to defendant. ~~Further,~~

B. In addition to any conditions of probation provided for in subsection A of this section, the court may, in the case of a person before the court for the offense of operating or being in control of a motor vehicle while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol and another intoxicating substance, before the court for the offense of operating a motor vehicle while the

ability of the person to operate such vehicle was impaired due to the consumption of alcohol, require such person to participate in one or both of the following:

1. An alcohol and drug substance abuse course, pursuant to Sections ~~11-902.2~~ 3-452 and ~~11-902.3~~ 3-453 of Title ~~47~~ 43A of the Oklahoma Statutes; and

2. A victims impact panel program sponsored by the Highway Safety Division of the Oklahoma Department of Transportation, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not to exceed Five Dollars ($5.00), to the victims impact panel program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee.

C. In addition to any conditions of probation provided for in subsection A of this section, the court, in the case of a sex offender, shall require the person to attend and successfully complete a treatment program designed specifically for the treatment of sex offenders, if available and if approved by the probation officer who has supervisory authority over the defendant or the court if the court retains supervisory authority over the defendant. Such treatment shall be at the expense of the defendant.

~~B.~~ D. Upon completion of the probation term, which probation term under this ~~procedure~~ section shall not exceed five (5) years, the defendant shall be discharged without a court judgment of guilt, and the verdict or plea of guilty or plea of nolo contendere shall be expunged from the record and said charge shall be dismissed with prejudice to any further action. The procedure to expunge the defendant's record shall be as follows:

1. All references to the defendant's name shall be deleted from the docket sheet;

2. The public index of the filing of the charge shall be expunged by deletion, mark-out or obliteration;

3. Upon expungement, the court clerk shall keep a separate confidential index of case numbers and names of defendants which have been obliterated pursuant to the provisions of this section;

4. No information concerning the confidential file shall be revealed or released, except upon written order of a judge of the district court; and

5. Defendants qualifying under Section 18 of this title may petition the court to have the filing of the indictment and the dismissal expunged from the public index and docket sheet. This section shall not be mutually exclusive of Section 18 of this title.

~~C.~~ E. Upon order of the court, the provisions of subsection ~~B~~ D of this section shall be retroactive to September 1, 1987.

~~D.~~ F. Upon violation of the conditions of probation, the court may enter a judgment of guilt and proceed as provided in Section 991a of this title. Further, if the probation is for a felony offense, and the defendant violates the conditions of probation by committing another felony offense, the defendant shall not be allowed bail pending appeal.

G. The deferred judgment procedure described in this section shall only apply to defendants not having been previously convicted of a felony.

H. A plea of nolo contendere shall not be deemed to allow a defendant to refuse to discuss offenses related to the plea with the probation officer having supervisory authority over the defendant or, if required by the court, with a treatment counselor.

SECTION 3. AMENDATORY 57 O.S. 1991, Section 512, is amended to read as follows:

Section 512. Any inmate in a state penal institution who has been granted a parole shall be released from the institution upon the following conditions:

1. That he comply with specified requirements of the Division of Community Services of the Department of Corrections under the active supervision of a Probation and Parole Officer. Such active supervision shall be for a period not to exceed three (3) years, except as provided in paragraph 2 of this section.

2. That he be actively supervised by a Probation and Parole Officer for an extended period not to exceed the expiration of the

maximum term or terms for which he was sentenced if convicted of a sex offense or upon the determination by the Division of Community Services that the best interests of the public and the parolee will be served by such an extended period of supervision.

The Probation and Parole Officer, upon information sufficient to give him reasonable grounds to believe that the parolee has violated the terms of and conditions of his parole, shall notify the Deputy Director of the Division of Community Services in accordance with Section 516 of Title 57 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 57 O.S. 1991, Section 582, is amended to read as follows:

Section 582. The provisions of the Sex Offenders Registration Act shall apply to any person who, after November 1, 1989, has been convicted or received a suspended sentence for a crime or an attempt to commit a crime provided for in Sections 885, 888, 1021, 1021.2, 1021.3, 1087, 1088, 1114 or 1123 of Title 21 of the Oklahoma Statutes or who enters this state after November 1, 1989, and who has been convicted or received a suspended sentence for a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in any of said laws. The provisions of the Sex Offenders Registration Act shall apply to any person who, on or after September 1, 1993, receives a deferred judgment for a crime or an attempt to commit a crime provided for in Sections 885, 888, 1021, 1021.2, 1021.3, 1087, 1088, 1114 or 1123 of Title 21 of the Oklahoma Statutes or who enters this state on or after September 1, 1993, and who has received a deferred judgment for a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in any of said laws. The provisions of the Sex Offenders Registration Act shall not apply to any such person while the person is incarcerated in a correctional institution of the Department of Corrections.

SECTION 5. This act shall become effective September 1, 1993.