

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2792

By: Rice

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 1991, Section 991c, as last amended by Section 3, Chapter 360, O.S.L. 1993 (22 O.S. Supp. 1993, Section 991c), which relates to deferred judgment procedure; adding conditions for discharge of defendant and expungement; modifying information that is expunged; eliminating separate index and prohibition concerning separate index; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 991c, as last amended by Section 3, Chapter 360, O.S.L. 1993 (22 O.S. Supp. 1993, 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.

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 3-452 and 3-453 of Title 43A of the Oklahoma Statutes; and

2. 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 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. Upon completion of the probation term, which probation term under this procedure shall not exceed five (5) years and upon a

finding by the court that the conditions of probation have been successfully complied with and all fines, fees and monetary assessments have been paid as ordered, 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~~ plea shall be as follows:

1. All references to the defendant's ~~name~~ plea of guilty or nolo contendere 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~~ All references to the defendant's plea of guilty or nolo contendere shall be deleted from the case file and all documents therein; and

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.

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

E. 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.

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

G. The deferred judgement procedure described in this section shall not apply to defendants who plead guilty or nolo contendere to a sex offense.

Provided, for the purposes of this section, the term "sex offense" shall not include a violation of paragraph 1 of subsection A of Section 1021 of Title 21 of the Oklahoma Statutes.

SECTION 2. This act shall become effective September 1, 1994.

44-2-8692

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