

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 1087

By: Smith of the Senate

and

Steidley of the House

An Act relating to probation fees; amending 22 O.S.

1991, Sections 305.2 and 991d, as amended by

Section 7, Chapter 286, O.S.L. 1995 (22 O.S. Supp.

1995, Section 991d), which relate to deferred

prosecution and probation fees; * * * and declaring

an emergency.

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
and insert

"An Act relating to criminal procedure; amending 22 O.S. 1991, Sections 305.2 and 991d, as amended by Section 7, Chapter 286, O.S.L. 1995 (22 O.S. Supp. 1995, Section 991d), which relate to deferred prosecution, probation and parole fees; making probation fees the same for persons under deferred prosecution agreement and Interstate Compact Agreement as state offenders; providing that fee applies to persons under the supervision of Department of Corrections Probation and Parole employees; making fee a minimum fee; transferring authority to set fee from the court to the Department of Corrections; authorizing an administrative fee; amending Section 2, Chapter 292, O.S.L. 1994 (22 O.S. Supp. 1995, Section 2002), which relates to disclosure of evidence; providing that certain disclosure requirements for state witnesses do not apply to witnesses who are peace officers; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 305.2, is amended to read as follows:

Section 305.2 If an accused qualifies for the deferred prosecution program, the accused and the State of Oklahoma may execute an agreement whereby the accused agrees to waive any rights to a speedy accusation, a speedy trial, and any statute of limitations, and agrees to fulfill such conditions as the accused and the State of Oklahoma may agree including, but not limited to, restitution and community services.

The accused person, as consideration for entering a deferred prosecution agreement, consents and agrees to a full and complete photographic record of property which was to be used as evidence. Such photographic record shall be competent evidence of such property and admissible in any criminal action or proceeding as the best evidence.

Return of property after the photographic record is made shall be as follows:

1. Property, except that which is prohibited by law, shall be returned to its owner after proper verification of title;

2. The return to the owner shall be without prejudice to the state or to any person who may have a claim against the property; and

3. When a return is made to the owner, the owner shall sign, under penalty of perjury, a declaration of ownership, which shall be retained by the person in charge of the property at the police department or sheriff's office.

As additional consideration for the agreement, the State of Oklahoma shall agree not to file an information if the accused satisfactorily completes the conditions of the agreement.

The agreement may include provisions whereby the accused agrees to supervision by the Probation and Parole Division of the Department of Corrections. If the accused is required to be

supervised by the Department of Corrections, ~~he~~ the person shall be required to pay a fee of ~~Ten Dollars (\$10.00)~~ Forty Dollars (\$40.00) per month ~~unless such fee would impose an unnecessary hardship on the accused.~~ The fee shall be paid to the Probation and Parole Fund of the Department of Corrections. The Department of Corrections shall supervise and perform such other services as required by the district attorney to effectuate the agreement of the parties. The Probation and Parole Division shall report at least monthly to the district attorney on the progress of the accused, and shall report immediately if the accused fails to report or participate in any program.

The agreement between the parties may require the accused to participate or consult with social service agencies, including any programs offered by the Department of Human Services, the Department of Mental Health and Substance Abuse Services, the Employment Security Commission, the Department of Corrections, federal services agencies, other state agencies, colleges, universities and vocational-technical schools and private or charitable service organizations. Any state agency called upon for assistance in a deferred prosecution program by any district attorney shall render such services and assistance as available, and shall bear the costs of any such services and assistance. If the accused has sufficient means, the accused may be required to reimburse all or a part of the cost of the services as a condition of participation in the deferred prosecution program.

The agreement between the parties may require the accused to pay a victim compensation assessment pursuant to the provisions of Section 142.18 of Title 21 of the Oklahoma Statutes. The amount of such assessment shall be agreed to by the parties and shall be within the amounts specified in Section 142.18 of Title 21 of the Oklahoma Statutes for the offense charged.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 991d, as amended by Section 7, Chapter 286, O.S.L. 1995 (22 O.S. Supp. 1995, Section 991d), is amended to read as follows:

Section 991d. A. 1. ~~A court granting probation~~ The Director of the Department of Corrections shall fix a fee of no more than Forty Dollars (\$40.00) per month to be paid by the probationer to the Department of Corrections any person supervised by Department of Corrections Probation and Parole employees during the probationary supervision period, provided, however, that this mandatory fee will not pertain if, in the judgment of the court, the fee would impose an unnecessary hardship on the probationer. In hardship cases, the court shall expressly waive all or part of the fee. The court shall make payment of the fee a condition of granting or continuing the probation which shall be imposed whether the probation is incident to the suspending of execution of a sentence, incident to the suspending of imposition of a sentence, or incident to the deferral of proceedings after a verdict or plea of guilty, but such condition shall not be imposed unless probationary services are made available to the defendant if supervision services are made available to the person. The Director may determine the method a fee is to be paid by a person under supervision, require that the person being supervised pay reasonable charges for the collection of the fee, and use reasonable means to collect fees that are owed, to include requiring a person under supervision to perform community service in lieu of fee payment. The Director may modify the amount of fees to be paid based on hardship of the person under supervision or degree of supervision required for the person. The Director will report failure to pay fees by a person under supervision to any authority that placed that person under supervision for consideration of revoking the supervision.

2. If restitution is ordered by the court, the probation fee will be paid in addition to the restitution ordered. In addition to

the restitution payment and probation fee, a reasonable administrative fee ~~of One Dollar (\$1.00) per payment is to be paid~~ ~~to~~ may be charged by the Department of Corrections to cover the expenses of administration of the restitution.

~~B. The Pardon and Parole Board shall fix a fee of Forty Dollars (\$40.00) per month to be paid by the parolee as a condition of parole which shall be paid to the Department of Corrections. The condition of the fee may not be imposed unless parole services are made available to the parolee. Provided, however, that this mandatory fee will not pertain if, in the judgment of the Pardon and Parole Board, the fee would impose an unnecessary hardship on the parolee. In such hardship cases the Pardon and Parole Board shall expressly waive all or part of the fee.~~

~~C. Upon Department of Corrections acceptance of an offender whose probation or parole supervision was transferred to Oklahoma through the Interstate Compact Agreement, a fee shall be assessed of Fifty Dollars (\$50.00) per month to be paid by the offender to the Department of Corrections. If, in the judgment of the Department of Corrections, such a fee would impose an unnecessary hardship on the offender, the fee shall be waived.~~

~~D.~~ Except as provided in this subsection, all fees collected pursuant to this section shall be deposited in the Department of Corrections Revolving Fund created pursuant to Section 557 of Title 57 of the Oklahoma Statutes. For the fiscal year ending June 30, 1996, fifty percent (50%) of all collections received from offenders placed on probation or parole after July 1, 1995, shall be transferred to the credit of the General Revenue Fund of the State Treasury until such time as total transfers equal Three Million Three Hundred Thousand Dollars (\$3,300,000.00).

SECTION 3. AMENDATORY Section 2, Chapter 292, O.S.L. 1994 (22 O.S. Supp. 1995, Section 2002), is amended to read as follows:

Section 2002. A. Disclosure of Evidence by the State.

1. Upon request of the defense, the state shall be required to disclose the following:

- a. the names and addresses of witnesses which the state intends to call at trial, together with their relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement;
- b. law enforcement reports made in connection with the particular case;
- c. any written or recorded statements and the substance of any oral statements made by the accused or made by a codefendant;
- d. any reports or statements made by experts in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;
- e. any books, papers, documents, photographs, tangible objects, buildings or places which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused;
- f. any record of prior criminal convictions of the defendant, or of any codefendant; and
- g. OSBI rap sheet/records check on any witness, other than a peace officer, listed by the state or the defense as a witness who will testify at trial, as well as any convictions of any witness revealed through additional record checks if the defense has furnished social security numbers or date of birth for their witnesses.

2. The state shall provide the defendant any evidence favorable to the defendant if such evidence is material to either guilt or punishment;

3. The prosecuting attorney's obligations under this standard extend to:

- a. material and information in the possession or control of members of the prosecutor's staff,
- b. any information in the possession of law enforcement agencies that regularly report to the prosecutor of which the prosecutor should reasonably know, and
- c. any information in the possession of law enforcement agencies who have reported to the prosecutor with reference to the particular case of which the prosecutor should reasonably know.

B. Disclosure of Evidence by the Defendant.

1. Upon request of the state, the defense shall be required to disclose the following:

- a. the names and addresses of witnesses which the defense intends to call at trial, together with their relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement;
- b. the name and address of any witness, other than the defendant, who will be called to show that the defendant was not present at the time and place specified in the information or indictment, together with the witness' statement to that fact;
- c. the names and addresses of any witness the defendant will call, other than himself, for testimony relating to any mental disease, mental defect, or other condition bearing upon his mental state at the time the offense was allegedly committed, together with the witness' statement of that fact, if the statement is redacted by the court to preclude disclosure of privileged communication.

2. A statement filed under subparagraph a, b or c of paragraph 1 of subsection A or B of this section is not admissible in evidence at trial. Information obtained as a result of a statement filed under subsection A or B of this section is not admissible in evidence at trial except to refute the testimony of a witness whose identity subsection A of this section requires to be disclosed.

3. Upon the prosecuting attorney's request after the time set by the court, the defendant shall allow him access at any reasonable times and in any reasonable manner to inspect, photograph, copy, or have reasonable tests made upon any book, paper, document, photograph, or tangible object which is within the defendant's possession or control and which:

- a. the defendant intends to offer in evidence, except to the extent that it contains any communication of the defendant; or
- b. is a report or statement as to a physical or mental examination or scientific test or experiment made in connection with the particular case prepared by and relating to the anticipated testimony of a person whom the defendant intends to call as a witness, provided the report or statement is redacted by the court to preclude disclosure of privileged communication.

C. Continuing Duty to Disclose.

If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under the Oklahoma Criminal Discovery Code, such party shall promptly notify the other party, the attorney of the other party, or the court of the existence of the additional evidence or material.

D. Time of Discovery.

Motions for discovery may be made at the time of the district court arraignment or thereafter; provided that requests for police

reports may be made subject to the provisions of Section 258 of this title. All issues relating to discovery, except as otherwise provided, will be completed at least ten (10) days prior to trial. The court may specify the time, place and manner of making the discovery and may prescribe such terms and conditions as are just.

E. Regulation of Discovery.

1. Protective and Modifying Orders. Upon motion of the state or defendant, the court may at any time order that specified disclosures be restricted, or make any other protective order. If the court enters an order restricting specified disclosures, the entire text of the material restricted shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

2. Failure to Comply with a Request. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

3. The discovery order shall not include discovery of legal work product of either attorney which is deemed to include legal research or those portions of records, correspondence, reports, or memoranda which are only the opinions, theories, or conclusions of the attorney or the attorney's legal staff.

F. Reasonable cost of copying, duplicating, videotaping, developing or any other cost associated with this Code for items requested shall be paid by the party so requesting; however, any item which was obtained from the defendant by the state of which copies are requested by the defendant shall be paid by the state. Provided, if the court determines the defendant is indigent and without funds to pay the cost of reproduction of the required items,

the cost shall be paid by the Indigent Defender System, unless otherwise provided by law.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the House of Representatives the 17th day of April, 1996.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1996.

President of the Senate