ENROLLED SENATE
BILL NO. 119

By: Smith of the Senate

and

Benson and Steidley of the House

An Act relating to court clerks; amending 20 O.S. 1991, Sections 1307, as last amended by Section 5, Chapter 225, O.S.L. 1994 and 1308, as last amended by Section 6, Chapter 225, O.S.L. 1994 (20 O.S. Supp. 1994, Sections 1307 and 1308), which relate to the court fund; extending time allowed for reporting of certain receipts and disbursements; requiring court clerks to submit certain report; requiring certain court clerks to deposit certain amounts in the court fund; amending 22 O.S. 1991, Section 991c, as last amended by Section 2, Chapter 308, O.S.L. 1994 (22 O.S. Supp. 1994, Section 991c), which relates to deferred judgment procedures; requiring court to make certain finding relating to compliance with certain conditions of probation and payment of certain fees; amending 22 O.S. 1991, Section 1115.1, which relates to releases upon personal recognizance; modifying circumstances pursuant to how certain notices and requests are processed; amending 28 O.S. 1991, Section 153, as last amended by Section 8, Chapter 229, O.S.L. 1994 (28 O.S. Supp. 1994, Section 153), which relates to court costs in certain criminal cases; eliminating certain transfer of funds; repealing 12 O.S. 1991, Section 1771.1, which relates to fee for entry of judgment on the

judgment docket; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 20 O.S. 1991, Section 1307, as last amended by Section 5, Chapter 225, O.S.L. 1994 (20 O.S. Supp. 1994, Section 1307), is amended to read as follows:

Section 1307. A. Within thirty (30) days after the end of each quarter of every fiscal year, the court clerk of each county shall report to the Supreme Court, in such manner as prescribed by the Supreme Court, the receipts that have been deposited in the court fund and the disbursements therefrom for the preceding quarter of the year and the total amount in the fund at the end of the quarter. Ten percent (10%) of the amount collected in the court fund shall be transferred to the State Judicial Retirement Fund at the end of each quarter.

B. In the report for the last quarter of every fiscal year, the court clerk shall, in addition to other information required, submit the following data:

1. The gross receipts to the court fund during the entire last fiscal year;

2. The total amount of expenses paid during the entire last fiscal year, including, but not limited to, bond and interest expense and payments to the county general fund; and

3. The total amount of money transferred, and to be transferred, to the State Judicial Fund and the State Judicial Retirement Fund for the entire last fiscal year as set forth in Section 1308 of this title.

C. The court clerk of each county shall submit to the Administrative Office of the Courts a copy of the Treasurer's Reconciliation Report, which shows monthly receipts and expenditures, by the fifteenth day of each month.

SECTION 2. AMENDATORY 20 O.S. 1991, Section 1308, as last amended by Section 6, Chapter 225, O.S.L. 1994 (20 O.S. Supp. 1994, Section 1308), is amended to read as follows:

Section 1308. At the time the report required by Section 1307 of this title is made, the court clerk must transmit to the Supreme Court for deposit in the State Judicial Retirement Fund, ten percent (10%) of the amount collected in the court fund for the reporting period. Clerks in counties having a population of less than seventy thousand (70,000) must also transmit for deposit in the State Judicial Fund the amount by which the receipts deposited in the court fund for the reporting period, including the interest earned on the court fund, exceeds the expenses for the reporting period, provided the court clerk shall retain from the excess amount a sum equal to twenty percent (20%) of the expenses for the quarter. Clerks in counties having a population of seventy thousand (70,000) or more shall transmit each month for deposit in the State Judicial Fund the amount by which the receipts deposited in the court fund for the reporting period, including interest earned on the court fund, exceeds the expenses for the reporting period, provided the clerk shall retain from the excess amount a sum equal to twenty percent (20%) of the expenses for the reporting period. Within thirty (30) days after the end of each fiscal year, the court clerk, in addition to the other amounts due hereunder, shall transmit to the Supreme Court for deposit in the State Judicial Fund an amount

equal to the gross receipts for the entire past fiscal year less the total amount of expenses, as defined in subsection B of Section 1307 of this title, and less the transfers made for the past fiscal year.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 991c, as last amended by Section 2, Chapter 308, O.S.L. 1994 (22 O.S. Supp. 1994, 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 shall, 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, or who is 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 an alcohol and drug substance abuse evaluation program offered by a facility or qualified practitioner certified by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the facility or qualified practitioner for the evaluation. The Department of Mental Health and Substance Abuse Services shall establish a fee schedule, based upon a person's ability to pay, provided the fee for an evaluation shall not exceed Seventy-five Dollars ($75.00). The evaluation shall be conducted at a certified facility, the office of a qualified practitioner or at another location as ordered by the court. The facility or qualified practitioner shall, within seventy-two (72) hours from the time the person is assessed, submit a written report to the court for the purpose of assisting the court in its determination of conditions for deferred sentence. No person, agency or facility operating an alcohol and drug substance abuse evaluation program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated pursuant to this subsection for any treatment program or alcohol and drug substance abuse service in which such person, agency or facility has a vested interest; however, this provision shall not be construed to prohibit the court from ordering participation in or any person from voluntarily utilizing a treatment program or alcohol and drug substance abuse service offered by such person, agency or facility. Any evaluation report submitted to the court pursuant to this subsection shall be handled in a manner which will keep such report confidential from the general public's review. Nothing contained in this subsection shall

be construed to prohibit the court from ordering judgment and sentence in the event the defendant fails or refuses to comply with an order of the court to obtain the evaluation required by this subsection. As used in this subsection, "qualified practitioner" means a person with at least a bachelor's degree in substance abuse treatment, mental health or a related health care field and at least two (2) years' experience in providing alcohol abuse treatment, other drug abuse treatment, or both alcohol and other drug abuse treatment who is certified each year by the Department of Mental Health and Substance Abuse Services to provide these assessments. However, any person who does not meet the requirements for a qualified practitioner as defined herein, but who has been previously certified by the Department of Mental Health and Substance Abuse Services to provide alcohol or drug treatment or assessments, shall be considered a qualified practitioner provided all education, experience and certification requirements stated herein are met within two (2) years from the effective date of this act. The court may also 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 met 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 court shall order the verdict or plea of guilty or plea of nolo contendere to be expunged from the record and the 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.

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

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 judgment procedure described in this section shall not apply to defendants who plead guilty or nolo contendere to a sex offense. 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 4. AMENDATORY 22 O.S. 1991, Section 1115.1, is amended to read as follows:

Section 1115.1 A. In addition to other provisions of law for posting bail, any person, whether a resident of this state or a nonresident, who is arrested by a law enforcement officer solely for a misdemeanor violation of a state traffic law or municipal traffic ordinance, shall be released by the arresting officer upon personal recognizance if:

1. The arrested person has been issued a valid license to operate a motor vehicle by this state, another state jurisdiction within the United States, which is a participant in the Nonresident Violator Compact or any party jurisdiction of the Nonresident Violator Compact;

2. The arresting officer is satisfied as to the identity of the arrested person;

3. The arrested person signs a written promise to appear as provided for on the citation; and

4. The violation does not constitute:

a. a felony, or

b. negligent homicide, or

c. driving or being in actual physical control of a motor vehicle while impaired or under the influence of alcohol or other intoxicating substances, or

d. eluding or attempting to elude a law enforcement officer, or

e. operating a motor vehicle without having been issued a valid driver's license, or while the license is under suspension, revocation, denial or cancellation, or

f. an arrest based upon an outstanding warrant, or

g. a traffic violation coupled with any offense stated in subparagraphs a through f of this paragraph, or

h. an overweight violation, or the violation of a special permit exceeding the authorized permit weight, or

i. a violation relating to the transportation of hazardous materials.

B. If the arrested person is eligible for release on personal recognizance as provided for in subsection A of this section, then the arresting officer shall:

1. Designate the traffic charge;

2. Record information from the arrested person's driver's license on the citation form, including the name, address, date of birth, personal description, type of driver's license, driver's license number, issuing state, and expiration date;

3. Record the motor vehicle make, model and tag information;

4. Record the arraignment date and time on the citation; and

5. Permit the arrested person to sign a written promise to appear as provided for in the citation.

The arresting officer shall then release the person upon personal recognizance based upon the signed promise to appear. The citation shall contain a written notice to the arrested person that release upon personal recognizance based upon a signed written promise to appear for arraignment is conditional and that failure to timely appear for arraignment shall result in the suspension of the arrested person's driver's license in this state, or in the nonresident's home state pursuant to the Nonresident Violator Compact.

C. The court, or the court clerk as directed by the court, may continue or reschedule the date and time of arraignment upon request

of the arrested person or his attorney. If the arraignment is continued or rescheduled, the arrested person shall remain on personal recognizance and written promise to appear until such arraignment, in the same manner and with the same consequences as if the continued or rescheduled arraignment was entered on the citation by the arresting officer and signed by the defendant. An arraignment may be continued or rescheduled more than one time. Provided, however, the court shall require an arraignment to be had within a reasonable time. It shall remain the duty of the defendant to appear for arraignment unless the citation is satisfied as provided for in subsection D of this section.

D. A defendant released upon personal recognizance may elect to enter a plea of guilty or nolo contendere to the violation charged at any time before he is required to appear for arraignment by indicating such plea on the copy of the citation furnished to him or on a legible copy thereof, together with the date of the plea and signature. The defendant shall be responsible for assuring full payment of the fine and costs to the appropriate court clerk. Payment of the fine and costs may be made by personal, cashier's, traveler's, certified or guaranteed bank check, postal or commercial money order, or other form of payment approved by the court in an amount prescribed as bail for the offense. Provided, however, the defendant shall not use currency for payment by mail. If the defendant has entered a plea of guilty or nolo contendere as provided for in this subsection, such plea shall be accepted by the court and the amount of the fine and costs shall be:

1. As prescribed in Section 1115.3 of this title as bail for the violation; or

2. In case of a municipal violation, as prescribed by municipal ordinance for the violation charged; or

3. In the absence of such law or ordinance, then as prescribed by the court.

E. 1. If, pursuant to the provisions of subsection D of this section, the defendant does not timely elect to enter a plea of guilty or nolo contendere and fails to timely appear for arraignment, the court may issue a warrant for the arrest of the defendant and the municipal or district court clerk, within one hundred twenty (120) calendar days from the date the citation was issued by the arresting officer, shall notify the Department of Public Safety that:

a. the defendant was issued a traffic citation and released upon personal recognizance after signing a written promise to appear for arraignment as provided for in the citation,

b. the defendant has failed to appear for arraignment without good cause shown,

c. the defendant has not posted bail, paid a fine, or made any other arrangement with the court to satisfy the citation, and

d. the citation has not been satisfied as provided by law.

Additionally, the court clerk shall request the Department of Public Safety to either suspend the defendant's driver's license to operate a motor vehicle in this state, or notify the defendant's home state and request suspension of the defendant's driver's license in accordance with the provisions of the Nonresident Violator Compact. Such notice and request shall be on a form approved or furnished by the Department of Public Safety.

2. The court clerk shall not process the notification and request provided for in paragraph 1 of this subsection if, with respect to such charges:

a. the defendant was arraigned, posted bail, paid a fine, was jailed, or otherwise settled the case, or

b. the defendant was not released upon personal recognizance upon a signed written promise to appear as provided for in this section or if released, was not permitted to remain on such personal recognizance for arraignment, or

c. the violation relates to parking or standing or the transportation of hazardous materials, or

d. a period of one hundred twenty (120) calendar days or more has elapsed from the date the citation was issued by the arresting officer.

F. Following receipt of the notice and request from the court clerk for driver's license suspension as provided for in subsection E of this section, the Department of Public Safety shall proceed as provided for in Section 1115.5 of this title.

G. The municipal or district court clerk shall maintain a record of each request for driver's license suspension submitted to the Department of Public Safety pursuant to the provisions of this section. When the court or court clerk receives appropriate bail or payment of the fine and costs, settles the citation, makes other arrangements with the defendant, or otherwise closes the case, the court clerk shall furnish proof thereof to such defendant, if the defendant personally appears, or shall mail such proof by first class mail, postage prepaid, to the defendant at the address noted on the citation or at such other address as is furnished by the defendant. Additionally, the court or court clerk shall notify the home jurisdiction of the defendant as listed on the citation, if such jurisdiction is a member of the Nonresident Violator Compact, and shall, in all other cases, notify the Department, of the resolution of the case. The form of proof and the procedures for notification shall be approved by the Department of Public Safety. Provided, however, the court or court clerk's failure to furnish such proof or notice in the manner provided for in this subsection shall in no event create any civil liability upon the court, the court clerk, the State of Oklahoma or any political subdivision thereof, or any state department or agency or any employee thereof but duplicate proof shall be furnished to the person entitled thereto upon request.

SECTION 5. AMENDATORY 28 O.S. 1991, Section 153, as last amended by Section 8, Chapter 229, O.S.L. 1994 (28 O.S. Supp. 1994, Section 153), is amended to read as follows:

Section 153. A. The clerks of the courts shall collect as costs in every criminal case for each offense of which the defendant is convicted, irrespective of whether or not the sentence is deferred, the following flat charges and no more, except for charges otherwise provided for by law, which fee shall cover docketing of the case, filing of all papers, issuance of process, warrants, orders, and other services to date of judgment:

1. For each defendant convicted of exceeding the speed limit by at least one (1) mile per hour but not more than ten (10) miles per hour, whether charged individually or conjointly with others $57.00
2. For each defendant convicted of misdemeanor, including violation of any traffic law, other than for driving under the influence of alcohol or other intoxicating substance or an offense provided for in paragraph 1 of this subsection, whether charged individually or conjointly with others $73.00
3. For each defendant convicted of a felony, other than for driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others $93.00
4. For each defendant convicted of the misdemeanor of driving under the influence of alcohol or other intoxicating

substance, whether charged individually or conjointly with others $173.00

5. For each defendant convicted of the felony of driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others $173.00
6. For the services of a court reporter at each trial held in the case $20.00
7. For each time a jury is requested $30.00
8. A sheriff's fee for serving or endeavoring to serve each writ, warrant, order, process, command, or notice or pursuing any fugitive from justice $20.00 or mileage as established by the Oklahoma Statutes, whichever is greater.

B. Of the amount collected pursuant to paragraphs 2 through 5 of subsection A of this section, the sum of Three Dollars ($3.00) shall be deposited to the credit of the county Law Library Fund pursuant to Section 1201 et seq. of Title 20 of the Oklahoma Statutes.

C. Prior to conviction, parties in criminal cases shall not be required to pay, advance, or post security for the issuance or service of process to obtain compulsory attendance of witnesses. These fees shall be deposited into the court fund except that the sheriff's fee provided for in this section and the amount provided for in Section 153.2 of this title, when collected, shall be transferred to the Sheriff's Service Fee Account, created pursuant to the provisions of Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county in which service is made or attempted.

D. Costs required to be collected pursuant to this section shall not be dismissed or waived.

E. As used in this section, "convicted" means any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendere or otherwise, and any deferred judgment or suspended sentence.

F. A court clerk may accept in payment for any fee, fine or cost for violation of any traffic law a nationally recognized credit card issued to the applicant. The court clerk may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such credit card. For purposes of this paragraph, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services or anything else of value and which is accepted by over one thousand (1,000) merchants in this state. The court clerk shall determine which nationally recognized credit cards will be accepted as payment for fees; provided, the court clerk must ensure that no loss of state revenue will occur by the use of such card.

G. Upon receipt of payment of fines and costs for offenses charged prior to July 1, 1992, the court clerk shall apportion and pay Thirteen Dollars ($13.00) per conviction to the court fund.

SECTION 6. REPEALER 12 O.S. 1991, Section 1771.1, is hereby repealed.

SECTION 7. This act shall become effective July 1, 1995.

SECTION 8. 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.