

SHORT TITLE: Criminal procedure; prohibiting deferred prosecution agreements and deferred sentencing for sex offenses, child abuse and child neglect.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 1081

By: Weedn

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 1991, Sections 305.1, 305.6 and 991c, as last amended by Section 6, Chapter 286, O.S.L. 1995 (22 O.S. Supp. 1995, Section 991c), which relate to authority for district attorney deferred prosecution agreements and court deferred sentencing; prohibiting deferred prosecution and deferred sentencing for sex offenses, child abuse and child neglect; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 305.1, is amended to read as follows:

Section 305.1 Before the filing of an information against a person accused of committing a crime, the State of Oklahoma, through its district attorney, may agree with an accused to defer the filing of a criminal information for a period not to exceed two (2) years, except where the accused has been arrested for a sex offense or an offense involving child abuse or child neglect.

The State of Oklahoma may include any person in a deferred prosecution program if it is in the best interests of the accused and not contrary to the public interest. Each district attorney shall adopt and promulgate guidelines which shall indicate what factors shall be considered in including an accused in the deferred prosecution program. The guidelines shall insure that the State of Oklahoma considers in each case at least the following factors:

1. Whether the State of Oklahoma has sufficient evidence to achieve conviction;

2. The nature of the offense with priority given to first offenders and nonviolent crimes;
3. Any special characteristics of the accused;
4. Whether the accused will cooperate and benefit from a deferred prosecution program;
5. Whether available programs are appropriate to the accused person's needs;
6. Whether the services for the accused are more readily available from the community or from the corrections system;
7. Whether the accused constitutes a substantial danger to others;
8. The impact of the deferred prosecution on the community;
9. The recommendations of the law enforcement agency involved in the case;
10. The opinions of the victim; and
11. Any mitigating or aggravating circumstances.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 305.6, is amended to read as follows:

Section 305.6 A. The District Attorneys Council shall assist each district attorney in the development of the deferred prosecution program in their jurisdictions, and shall prepare and promulgate model forms for the use of the various district attorneys of this state.

B. Deferred prosecution agreements shall not be permitted for any person arrested for an alleged violation of a sex offense or an offense involving child abuse or neglect.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 991c, as last amended by Section 6, Chapter 286, O.S.L. 1995 (22 O.S. Supp. 1995, 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 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 or the maximum amount of jail time provided for the offense, if it is less than ninety (90) days, to be served in conjunction with probation. Further, the court shall order the defendant to pay a sum into the court fund equal to Fifty Dollars (\$50.00) for each month to be served on the deferred sentence but 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 or whatever lesser amount the court determines that the defendant is able to pay and the court may order 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~~ or any offense involving child abuse or child neglect.

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.

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