

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 COMMITTEE SUBSTITUTE  
4 FOR  
5 HOUSE BILL NO. 1623

By: Askins

6  
7 COMMITTEE SUBSTITUTE

8 An Act relating to criminal procedure; amending 22  
9 O.S. 1991, Section 991c, as last amended by Section  
10 70, Chapter 133, O.S.L. 1997 (22 O.S. Supp. 1998,  
11 Section 991c), which relates to deferred judgments;  
12 authorizing the district court to impose a fine as a  
13 condition of a deferred judgment; providing an  
14 effective date and declaring an emergency.

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

16 SECTION 1. AMENDATORY 22 O.S. 1991, Section 991c, as  
17 last amended by Section 70, Chapter 133, O.S.L. 1997 (22 O.S. Supp.  
18 1998, Section 991c), is amended to read as follows:

19 Section 991c. A. Upon a verdict or plea of guilty or upon a  
20 plea of nolo contendere, but before a judgment of guilt, the court  
21 may, without entering a judgment of guilt and with the consent of  
22 the defendant, defer further proceedings upon the specific  
23 conditions prescribed by the court not to exceed a five-year period.  
24 The court shall first consider restitution among the various  
25 conditions it may prescribe. The court may also consider ordering  
26 the defendant to:

27 1. Engage in a term of community service without compensation,  
28 according to a schedule consistent with the employment and family  
29 responsibilities of the defendant;

30 2. County jail confinement for a period not to exceed ninety  
31 (90) days or the maximum amount of jail time provided for the  
32 offense, if it is less than ninety (90) days; provided however, the

1 state shall not pay for any confinement ordered pursuant to the  
2 provisions of this section;

3 3. Pay an amount as reimbursement for reasonable attorney fee,  
4 to be paid into the court fund, if a court-appointed attorney has  
5 been provided to defendant;

6 4. Be supervised in the community for a period not to exceed  
7 two (2) years. As a condition of any supervision, the defendant  
8 shall be required to pay a supervision fee of Forty Dollars (\$40.00)  
9 per month. The supervision fee shall be waived in whole or part by  
10 the supervisory agency when the accused is indigent. No person  
11 shall be denied supervision based solely on the person's inability  
12 to pay a fee;

13 5. Pay into the court fund a monthly amount not exceeding Forty  
14 Dollars (\$40.00) per month during any period during which the  
15 proceedings are deferred when the defendant is not to be supervised  
16 in the community. The total amount to be paid into the court fund  
17 shall be established by the court and shall not exceed the amount of  
18 the maximum fine authorized by law for the offense;

19 6. Make other reparations to the community or victim as  
20 required and deemed appropriate by the court;

21 7. Order any remedies for which provision is made in subsection  
22 B of Section ~~46~~ 987.8 of this ~~act~~ title;

23 8. Pay court costs; ~~or~~

24 9. Pay a fine as authorized by law for the offense; or

25 10. Any combination of the above provisions.

26 B. In addition to any conditions provided for in subsection A  
27 of this section, the court shall, in the case of a person before the  
28 court for the offense of operating or being in control of a motor  
29 vehicle while the person was under the influence of alcohol, other  
30 intoxicating substance, or a combination of alcohol and another  
31 intoxicating substance, or who is before the court for the offense  
32 of operating a motor vehicle while the ability of the person to

1 operate such vehicle was impaired due to the consumption of alcohol,  
2 require the person to participate in an alcohol and drug substance  
3 abuse evaluation program offered by a facility or qualified  
4 practitioner certified by the Department of Mental Health and  
5 Substance Abuse Services for the purpose of evaluating the  
6 receptivity to treatment and prognosis of the person. The court  
7 shall order the person to reimburse the facility or qualified  
8 practitioner for the evaluation. The Department of Mental Health  
9 and Substance Abuse Services shall establish a fee schedule, based  
10 upon a person's ability to pay, provided the fee for an evaluation  
11 shall not exceed Seventy-five Dollars (\$75.00). The evaluation  
12 shall be conducted at a certified facility, the office of a  
13 qualified practitioner or at another location as ordered by the  
14 court. The facility or qualified practitioner shall, within  
15 seventy-two (72) hours from the time the person is assessed, submit  
16 a written report to the court for the purpose of assisting the court  
17 in its determination of conditions for deferred sentence. No  
18 person, agency or facility operating an alcohol and drug substance  
19 abuse evaluation program certified by the Department of Mental  
20 Health and Substance Abuse Services shall solicit or refer any  
21 person evaluated pursuant to this subsection for any treatment  
22 program or alcohol and drug substance abuse service in which the  
23 person, agency or facility has a vested interest; however, this  
24 provision shall not be construed to prohibit the court from ordering  
25 participation in or any person from voluntarily utilizing a  
26 treatment program or alcohol and drug substance abuse service  
27 offered by such person, agency or facility. Any evaluation report  
28 submitted to the court pursuant to this subsection shall be handled  
29 in a manner which will keep the report confidential from the general  
30 public's review. Nothing contained in this subsection shall be  
31 construed to prohibit the court from ordering judgment and sentence  
32 in the event the defendant fails or refuses to comply with an order

1 of the court to obtain the evaluation required by this subsection.  
2 As used in this subsection, "qualified practitioner" means a person  
3 with at least a bachelor's degree in substance abuse treatment,  
4 mental health or a related health care field and at least two (2)  
5 years' experience in providing alcohol abuse treatment, other drug  
6 abuse treatment, or both alcohol and other drug abuse treatment who  
7 is certified each year by the Department of Mental Health and  
8 Substance Abuse Services to provide these assessments. However, any  
9 person who does not meet the requirements for a qualified  
10 practitioner as defined herein, but who has been previously  
11 certified by the Department of Mental Health and Substance Abuse  
12 Services to provide alcohol or drug treatment or assessments, shall  
13 be considered a qualified practitioner provided all education,  
14 experience and certification requirements stated herein are met by  
15 September 1, 1995. The court may also require the person to  
16 participate in one or both of the following:

- 17 1. An alcohol and drug substance abuse course, pursuant to  
18 Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes; and
- 19 2. A victims impact panel program, if such a program is offered  
20 in the county where the judgment is rendered. The defendant shall  
21 be required to pay a fee, not less than Five Dollars (\$5.00) nor  
22 more than Fifteen Dollars (\$15.00) as set by the governing authority  
23 of the program and approved by the court, to the victims impact  
24 panel program to offset the cost of participation by the defendant,  
25 if in the opinion of the court the defendant has the ability to pay  
26 such fee.

27 C. Upon completion of the conditions of the deferred judgment,  
28 and upon a finding by the court that the conditions have been met  
29 and all fines, fees, and monetary assessments have been paid as  
30 ordered, the defendant shall be discharged without a court judgment  
31 of guilt, and the court shall order the verdict or plea of guilty or  
32 plea of nolo contendere to be expunged from the record and the

1 charge shall be dismissed with prejudice to any further action. The  
2 procedure to expunge the defendant's record shall be as follows:

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

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

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

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

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

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

19 E. Upon violation of any condition of the deferred judgment,  
20 the court may enter a judgment of guilt and proceed as provided in  
21 Section 991a of this title or may modify any condition imposed.  
22 Provided, however, if the deferred judgment is for a felony offense,  
23 and the defendant commits another felony offense, the defendant  
24 shall not be allowed bail pending appeal.

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

28 G. The deferred judgment procedure described in this section  
29 shall not apply to defendants who plead guilty or nolo contendere to  
30 a sex offense. The term "sex offense" shall not include a violation  
31 of paragraph 1 of subsection A of Section 1021 of Title 21 of the  
32 Oklahoma Statutes.

1 H. The Department of Corrections may provide supervision for  
2 deferred judgments by contract with the local community sentencing  
3 system, and any conditional requirements imposed shall be subject to  
4 availability of funding in the local community sentencing system.

5 SECTION 2. This act shall become effective July 1, 1999.

6 SECTION 3. It being immediately necessary for the preservation  
7 of the public peace, health and safety, an emergency is hereby  
8 declared to exist, by reason whereof this act shall take effect and  
9 be in full force from and after its passage and approval.

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