STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1451

By: Henry of the Senate

and

Toure of the House

COMMITTEE SUBSTITUTE

(Criminal procedure - deferral of prosecutions - confidential information - effective date - emergency)

SECTION 1. AMENDATORY 22 O.S. 1991, Section 305.2, as last amended by Section 23, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (22 O.S. Supp. 1999, Section 305.2), is amended to read as follows:

Section 305.2 A. If an accused qualifies for the deferred prosecution program, the accused and the State of Oklahoma, through ~~it's~~ the district attorney, 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~~ to which the accused and the State of Oklahoma may agree including, but not limited to, restitution and community services.

B. The accused ~~person~~, as consideration for entering into a deferred prosecution agreement, consents and agrees to a full and complete photographic record of property which was to be used as evidence. ~~Such~~ The photographic record shall be competent evidence

of ~~such~~ the property and admissible in any criminal action or proceeding as the best evidence. ~~Return of property~~

C. Property shall be returned to its owner only after the photographic record is made ~~shall be as follows~~ subject to the following conditions:

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

2. The return of property 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~~ property is ~~made to the owner~~ returned, the ~~owner~~ recipient 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.

D. 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.

E. The agreement between the accused and the State of Oklahoma may include provisions whereby the accused agrees to be supervised in the community. If the accused is required to be supervised pursuant to the terms of the agreement, the person shall be required to pay a supervision fee to be established by the supervisory agency. The supervision fee shall be paid to the supervisory agency as required by the rules of the supervisory agency. The supervisory agency shall monitor the person for compliance with the conditions of the agreement ~~of the parties~~. The supervisory agency shall report to the district attorney on the progress of the accused, and shall report immediately if the accused fails to report or participate as required by the agreement.

F. The agreement between the parties may require the accused to participate or consult with local service providers, including the Department of Human Services, the Department of Mental Health and

Substance Abuse Services, the Employment Security Commission, federal services agencies, other state or local agencies, colleges, universities, vocational-technical schools, and private or charitable service organizations. When the accused is required to participate or consult with any service provider, a program fee may be required~~,~~ unless the fee would impose an unnecessary hardship on the person. The program fee shall be established by the service provider based upon a sliding scale. Any state agency called upon for assistance in a deferred prosecution program by any district attorney shall render ~~such~~ services and assistance as available. Any supervision fee or program fee authorized by this section may be waived in whole or in part when the accused is indigent. No person who is otherwise qualified for a deferred prosecution program shall be denied services or supervision based solely on the person's inability to pay a fee or fees.

G. 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~~ the 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.

H. Any deferred prosecution agreement including, but not limited to, any fee, sliding scale fee, compensation, contract, assessment, or other financial agreement charged or waived by the accused or the State of Oklahoma shall be a record open to the public.

I. 1. On or after the effective date of this act, each office of the district attorney shall, upon request and within a reasonable time, provide the name and other identifying information of an accused entering into a deferred prosecution agreement.

2. A deferred prosecution agreement entered into prior to the effective date of this act shall not be a record open to the public, unless confidentiality was waived as a condition of the agreement.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 305.3, is amended to read as follows:

Section 305.3 A. Both the State of Oklahoma and the accused may mutually terminate the deferred prosecution at any time, and the case shall proceed as if there had been no ~~deferment~~ agreement. If the State of Oklahoma makes the termination decision unilaterally, it shall only do so in light of all the relevant circumstances of the case. Arrest of the accused for a subsequent offense shall not automatically terminate the agreement. If the State of Oklahoma should decide to terminate the agreement, it shall:

1. Send a written notice of termination to the accused and the attorney for the accused, if any, explaining the reasons for the termination;

2. Disclose to the accused or the attorney for the accused the evidence supporting the decision to terminate; and

3. Afford the accused the opportunity to be heard and present evidence, and cross-examine witnesses before a ~~state~~ judge of the district court. The accused shall have ten (10) days from the date of mailing of ~~such~~ the notice to file a written request with the ~~district~~ court clerk for the county in which a charge is pending for ~~such~~ the hearing, after which ~~his~~ the right to ~~such~~ a hearing shall be ~~deemed~~ waived. The burden shall be upon the State of Oklahoma to prove that the accused did not fulfill the conditions of the agreement, and that an information should be filed.

B. ~~In the event~~ On and after the effective date of this act, if an agreement is terminated by the State of Oklahoma for failure of the person to comply with the terms of the deferred prosecution agreement, the termination document and supporting documentation shall be open to the public.

C. If an agreement is terminated by the State of Oklahoma~~,~~ and the accused is subsequently tried before a jury, the court shall instruct the jury not to consider any delay in prosecution while the accused was participating in the deferred prosecution program.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 305.5, is amended to read as follows:

Section 305.5 A. Information received and collected by any service agency while the accused participates in ~~the~~ a deferred prosecution program shall not be released to any agency or individual that will use the information for dissemination to the general public or be recorded in a computer system that has the potential for connection with national computer files, or be used by a law enforcement agency for the purposes of surveillance and investigation. The provisions of this subsection shall apply only with respect to information received and collected by any service agency pursuant to deferred prosecution agreements entered into by the parties relating to crimes committed prior to the effective date of this act, unless such information is otherwise deemed confidential by law.

B. Any information obtained in the course of investigating the suitability of the accused for inclusion in a deferred prosecution program shall remain confidential except for purposes of deferred prosecution programs and shall not be released by any individual or agency without permission from the accused, being advised by counsel. The provisions of this subsection shall apply only to agreements entered into by the parties relating to crimes committed prior to July 1, 2000, unless such information is otherwise deemed confidential by law.

C. If the deferred prosecution program is terminated before successful completion of the agreement, no information obtained as a result of the participation of the accused in the deferred prosecution program shall be admissible~~,~~ in any subsequent

proceeding ~~against~~ to the ~~advantage~~ disadvantage of the accused, except if ~~said~~ the information could have been routinely gathered in the police investigation of the crime of the accused.

D. ~~Any~~ 1. On and after the effective date of this act, any person releasing any information required by this section to be kept confidential shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than One Thousand Dollars ($1,000.00) or be imprisoned for not more than six (6) months, or both.

2. Prior to the effective date of this act, any person releasing any information required by this section to be kept confidential shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than One Thousand Dollars ($1,000.00) or be imprisoned for not more than six (6) months, or both.

E. The provisions of this subsection apply only to records within the care and custody of the district attorney.

SECTION 4. This act shall become effective July 1, 2000.

SECTION 5. 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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