

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL 725

By: Wilkerson of the Senate

and

Plunk of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Attorney General and Criminal Procedure; creating Hate Crimes Unit; stating duties of certain Unit; authorizing certain investigations, actions, and referrals; authorizing Attorney General to prosecute certain crimes; exempting certain records and documents from Oklahoma Open Records Act; creating certain revolving fund; making fund to be continuing fund; exempting fund from fiscal year limitations; appropriating certain fund for certain purposes; requiring expenditures from fund to be upon certain warrants; amending 22 O.S. 1991, Section 991c, as last amended by Section 70, Chapter 133, O.S.L. 1997 (22 O.S. Supp. 1998, Section 991c), which relates to deferred judgment procedure; preventing application of deferred judgment procedure to certain crimes; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 180 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created within the Office of the Attorney General a Hate Crimes Unit.

B. The Hate Crimes Unit, upon inquiry or complaint, shall determine the extent, if any, to which any violation has occurred of any statute of this state pertaining to incidents of crime reported within this state which are apparently directed against members of racial, ethnic, religious groups or other groups specified by Section 850 of Title 21 of the Oklahoma Statutes and may initiate

any necessary investigation, civil action, criminal action, or referral to a district attorney or any appropriate official of this state or any other state or the federal government.

C. If the Attorney General or a designee has reason to believe as a result of inquiry or complaint that a crime has been committed within this state which is apparently directed against members of racial, ethnic, religious groups or other groups specified by Section 850 of Title 21 of the Oklahoma Statutes, the Attorney General or a designee shall have all the powers of a district attorney to prosecute the crime.

D. Records, documents, reports and evidence obtained or created by the Office of the Attorney General as a result of a hate crime investigation pursuant to this section shall not be subject to the Oklahoma Open Records Act or to outside review or release by any individual except when authorized by the Attorney General or when required by an administrative or judicial proceeding.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19.3 of Title 74, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Office of the Attorney General to be designated the "Attorney General's Hate Crimes Unit Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations and shall consist of all monies designated to the fund by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Attorney General for the purpose of investigation, civil or criminal action or referral of hate crimes. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 991c, as last amended by Section 70, Chapter 133, O.S.L. 1997 (22 O.S. Supp. 1998, 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 upon the specific conditions prescribed by the court not to exceed a five-year period. The court shall first consider restitution among the various conditions it may prescribe. The court may also consider ordering the defendant to:

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

2. County jail confinement 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; provided however, the state shall not pay for any confinement ordered pursuant to the provisions of this section;

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

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

5. Pay into the court fund a monthly amount not exceeding Forty Dollars (\$40.00) per month during any period during which the proceedings are deferred when the defendant is not to be supervised

in the community. The total amount to be paid into the court fund shall be established by the court and shall not exceed the amount of the maximum fine authorized by law for the offense;

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

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

8. Pay court costs; or

9. Any combination of the above provisions.

B. In addition to any conditions 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 the 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 the 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 the 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 by September 1, 1995. The court may also require the 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. The defendant shall be required 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 conditions of the deferred judgment, and upon a finding by the court that the conditions have been 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 any condition of the deferred judgment, the court may enter a judgment of guilt and proceed as provided in Section 991a of this title or may modify any condition imposed. Provided, however, if the deferred judgment is for a felony offense, and the defendant commits 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 offense.

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.

H. The deferred judgment procedure described in this section shall not apply to defendants who are found guilty or who plead guilty or nolo contendere to a malicious intimidation or harassment because of race, color, religion, ancestry, national origin or disability pursuant to Section 850 of Title 21 of the Oklahoma Statutes.

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

SECTION 4. This act shall become effective July 1, 1999.

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 resolution shall take

effect and be in full force from and after its passage and approval.

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