

ENROLLED HOUSE
BILL NO. 1623

By: Askins of the House

and

Smith of the Senate

An Act relating to courts; 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 judgments; expanding conditions the district court may impose for deferred judgments; amending 12 O.S. 1991, Section 66, as amended by Section 1, Chapter 357, O.S.L. 1992 (12 O.S. Supp. 1998, Section 66), which relates to bonds and sureties; clarifying language; requiring payment of certain costs to the court fund from certain funds and providing exception; prohibiting dismissal of certain action without prior notification of certain court clerk; amending 20 O.S. 1991, Sections 92.5, 1304, as last amended by Section 7, Chapter 400, O.S.L. 1997 and 1315, as amended by Section 1, Chapter 57, O.S.L. 1994 (20 O.S. Supp. 1998, Sections 1304 and 1315), which relate to district court judicial districts, claims allowable against the court fund and the Oklahoma Court Information System; modifying qualifications of certain judicial candidate; deleting obsolete language; allowing certain security expenses as claim against court fund; updating language; modifying language; requiring direction of Chief Justice for use of certain services of the Oklahoma Court Information System; amending 22 O.S. 1991, Section 983, which relates to judgment and execution; allowing suspension of driving privileges for nonpayment of fine, cost, fee, or assessment; amending 28 O.S. 1991, Section 153, as last amended by Section 10, Chapter 339, O.S.L. 1996 (28 O.S. Supp. 1998, Section 153), which relates to court costs in criminal cases; requiring court clerk to collect actual costs of language interpreter; repealing 19 O.S. 1991, Sections 771, 774, 775, 776, 777 and 778, which relate to the County Courthouse Building Commission; and providing an effective date.

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

SECTION 1. 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. Pay court costs;

2. Pay an assessment in lieu of any fine authorized by law for the offense;

3. Pay any other assessment or cost authorized by law; or

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

~~2.~~ 5. 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.~~ 6. 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.~~ 7. 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.~~ 8. 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.~~ 9. Make other reparations to the community or victim as required and deemed appropriate by the court;

~~7.~~ 10. 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.~~ 11. 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 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 2. AMENDATORY 12 O.S. 1991, Section 66, as amended by Section 1, Chapter 357, O.S.L. 1992 (12 O.S. Supp. 1998, Section 66), is amended to read as follows:

Section 66. A. Whenever an action is filed in any of the courts in this state by the State of Oklahoma, or by direction of any department of the state, no bond, including cost, replevin, attachment, garnishment, redelivery, injunction ~~bonds~~, appeal ~~bonds~~ or other ~~obligations~~ obligation of security shall be required from the state or from any party acting under the direction of the state, either to prosecute, answer, or appeal the action. In case of an adverse decision, such costs as by law are taxable against the state, or against the party acting by its direction, shall be paid out of the ~~contingent fund~~ funds of the department under whose direction the proceedings were instituted; provided, that the court shall direct the nonprevailing party to pay ~~the filing fee and service fee~~ all costs of the action in the final order of the court.

B. Costs shall be paid to the court fund of the district court in which an action is filed from the first funds collected in satisfaction of any judgment obtained by this state or any party acting under the direction of this state, except when the funds are collected pursuant to a child support order or judgment. No action filed by this state or by any party acting under the direction of this state shall be dismissed with unpaid costs of the action without the prior notification of the district court clerk of the county in which the action was filed.

SECTION 3. AMENDATORY 20 O.S. 1991, Section 92.5, is amended to read as follows:

Section 92.5 The counties of Dewey, Blaine, Kingfisher, Garfield, Major, Woodward, Woods, Alfalfa and Grant. ~~Said~~ The district shall have three (3) district judges to be nominated and elected as follows: A candidate for office No. 1 shall be nominated and elected at large and a legal resident of Dewey, Woods, Major, Woodward or Alfalfa County; a candidate for office No. 2 shall be nominated and elected at large and a legal resident of Blaine, Kingfisher, Garfield or Grant County; and a candidate for office No. 3 shall be nominated and elected at large and a legal resident of Garfield or Grant County.

SECTION 4. AMENDATORY 20 O.S. 1991, Section 1304, as last amended by Section 7, Chapter 400, O.S.L. 1997 (20 O.S. Supp. 1998, Section 1304), is amended to read as follows:

Section 1304. A. Claims against the court fund shall include only expenses lawfully incurred for the operation of the court in each county. Payment of the expenses may be made after the claim is approved by the district judge who is a member of the governing board of the court fund and either the local court clerk or the local associate district judge who is a member of the governing board. No expenditures falling into any category listed in paragraphs ~~2~~ 1, 5, 6, 7 and ~~8~~ 13 of subsection B of this section, may be made without prior written approval of the Chief Justice of the Supreme Court. The Supreme Court may provide by rule the manner in which expenditures in the restricted categories shall be submitted for approval. When allowing the expenditures in paragraphs 6 and 7 of subsection B of this section, the Chief Justice shall direct that resort first be had to the surplus funds in the court fund in the county involved.

B. The term "expenses" shall include the following items and none others:

~~1. Principal and interest on bonds issued prior to January 1, 1968, pursuant to Sections 771 through 778 of Title 19 of the Oklahoma Statutes;~~

~~2. Compensation of bailiffs and part-time help;~~

~~3. 2. Juror fees and mileage, as well as overnight accommodation and food expense for jurors kept together as set out in Section 81 et seq. of Title 28 of the Oklahoma Statutes;~~

~~4. 3. Witness fees and mileage for witnesses subpoenaed by the defense as set out in Section 81 et seq. of Title 28 of the Oklahoma Statutes, except that expert witnesses for county indigent defenders shall be paid a reasonable fee for their services;~~

~~5. 4. Office supplies, books for records, postage, and printing;~~

~~6. 5. Furniture, fixtures, and equipment;~~

~~7. 6. Renovating, remodeling, and maintenance of courtrooms, judge's chambers, clerk's offices, and other areas primarily used for judicial functions;~~

~~8. 7. Rent for courtroom facilities outside the courthouse;~~

~~9. 8. Judicial robes;~~

~~10. 9. Attorney's fees for indigents in the trial court and on appeal;~~

~~11. 10. Compensation or reimbursement for services provided in connection with an adult guardianship proceeding as provided by Section 4-403 of Title 30 of the Oklahoma Statutes. Compensation from the court fund for attorneys appointed pursuant to the Oklahoma Guardianship Act, Section 1-102 et seq. of Title 30 of the Oklahoma Statutes, shall be substantially the same as for attorneys appointed in juvenile proceedings pursuant to Title 10 of the Oklahoma Statutes. The compensation, if any, for guardians ad litem appointed pursuant to the Oklahoma Guardianship Act shall not exceed One Hundred Dollars (\$100.00);~~

~~12. 11. Transcripts ordered by the court;~~

~~13. 12. Necessary telephone expenses, gas, water, and electrical utilities for the part of the county courthouse occupied by the court and other areas used for court functions;~~

~~13. Security expenses for the part of the county courthouse occupied by the court and other areas used for court functions;~~

14. The cost of publication notice in juvenile proceedings as provided in Section 7003-3.5 of Title 10 of the Oklahoma Statutes and in termination of parental rights proceedings brought by the state as provided in Section 7006-1.2 of Title 10 of the Oklahoma Statutes;

15. Interpreter fees;

16. Necessary travel expenses of the office of county indigent defender approved by the court fund governing board;

17. Rent for county indigent defender's office outside of the county courthouse;

18. Computer equipment for county indigent defender's office;

19. Reasonable compensation for expert, investigative, or other services authorized by the court for indigent defendants not represented by a county indigent defender or the Oklahoma Indigent Defense System, if requested;

20. Necessary training for the judges and court personnel on the court integrated computer system; and

21. Any other expenses now or hereafter expressly authorized by statute.

C. ~~No county courthouse building commission shall be created after March 1, 1968, and no disbursements shall be permitted from any court fund under the provisions of Sections 771 through 778 of Title 19 of the Oklahoma Statutes except by county courthouse commissions created prior to March 1, 1968; provided, nothing~~ Nothing in Section 1301 et seq. of this title shall prevent the construction of additional courtrooms within existing courthouse facilities, from funds other than the court fund.

D. Items of equipment, furniture, fixtures, printing, or supplies that are available in the quantities desired from a contract vendor's list for order or purchase by the court fund through the facilities of the Central Purchasing ~~Office~~ Division of the ~~State of Oklahoma~~ Department of Central Services may not be purchased by any court fund at prices higher than those approved by the Director of Central Purchasing ~~Office~~.

SECTION 5. AMENDATORY 20 O.S. 1991, Section 1315, as amended by Section 1, Chapter 57, O.S.L. 1994 (20 O.S. Supp. 1998, Section 1315), is amended to read as follows:

Section 1315. A. 1. The ~~State~~ Supreme Court, by and through the office of the Administrative Director of the Courts, shall establish a court information system to be designated the "Oklahoma Court Information System" for the purpose of providing data processing services to state agencies, boards, and commissions and other entities pursuant to contract. The Administrative Director of the Courts may assess a reasonable fee for such services.

2. Court clerks and judges of the district courts of this state shall utilize the case tracking, accounting, legal research, and other services of the "Oklahoma Court Information System" at the direction of the Chief Justice of the Supreme Court.

B. There is hereby created in the State Treasury a revolving fund for the ~~State~~ Supreme Court to be designated the "Oklahoma Court Information System Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received in payment of data processing services furnished pursuant to contract. The Administrative Director of the Courts, at the end of each month, shall issue a

statement of charges to each entity for which data processing services were furnished. The cost for data processing services shall be recovered directly from the entity for which such services were furnished and shall not be prorated to or payable by those not receiving the services. All monies accruing to the credit of ~~said~~ the fund are hereby appropriated and may be budgeted and expended by the State Supreme Court for the acquisition, operation, maintenance, repair, and replacement of data processing equipment and software. Expenditures from ~~said~~ the 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 6. AMENDATORY 22 O.S. 1991, Section 983, is amended to read as follows:

Section 983. A. Any defendant found guilty of an offense in any court of this state may be imprisoned for nonpayment of the fine ~~and/or costs, cost, fee, or assessment~~ when the trial court finds after notice and hearing that the defendant is financially able but refuses or neglects to pay the fine ~~and/or costs, cost, fee, or assessment~~. ~~In no case may a~~ A sentence to pay a fine, cost, fee, or assessment may be converted into a jail sentence ~~automatically, i.e., without~~ only after a hearing and a judicial determination, memorialized of record, that the defendant is able to satisfy the fine ~~and costs, cost, fee, or assessment~~ by payment, but refuses or neglects so to do.

B. After a judicial determination that the defendant ~~may be~~ is able to pay the fine ~~and costs, cost, fee, or assessment~~ in installments, the court may order the fine ~~and costs, cost, fee, or assessment~~ to be paid in installments and shall set the amount and ~~due date of~~ for each installment.

C. In addition, the district court or municipal court may send notice of ~~any~~ nonpayment of any court ordered fine ~~and costs for a moving traffic violation, cost, fee, or assessment~~ to the Department of Public Safety with a recommendation of suspension of driving privileges of the defendant until the total amount of any fine ~~and costs, cost, fee, or assessment~~ has been paid. Upon receipt of payment of the total amount of the fine ~~and costs for the moving traffic violation, cost, fee, or assessment~~, the court shall send notice thereof to the Department, if a nonpayment notice was sent as provided for in this subsection. ~~Such notices~~ Notices sent to the Department shall be on forms or by a method approved by the Department.

D. The Court of Criminal Appeals shall implement procedures and rules for methods of payment of fines ~~and/or, costs, fees, and assessments~~ by indigents, which procedures and rules shall be distributed to all district courts and municipal courts by the ~~court administrator~~ Administrative Office of the Courts.

SECTION 7. AMENDATORY 28 O.S. 1991, Section 153, as last amended by Section 10, Chapter 339, O.S.L. 1996 (28 O.S. Supp. 1998, 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

standing and parking violations and 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 the 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 a misdemeanor traffic violation other than an offense provided for in paragraph 1 or 5 of this subsection, whether charged individually or conjointly with others\$73.00
3. For each defendant convicted of a misdemeanor, other than for driving under the influence of alcohol or other intoxicating substance or an offense provided for in paragraph 1 or 2 of this subsection, whether charged individually or conjointly with others\$83.00
4. 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\$103.00
5. 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\$183.00
6. 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 \$183.00
7. For the services of a court reporter at each preliminary hearing and trial held in the case.....\$20.00
8. For each time a jury is requested.....\$30.00
9. 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.

10. For the services of a language interpreter, other than an interpreter appointed pursuant to the provisions of the Oklahoma Interpreter for the Deaf Act, at each hearing held in the case, the actual cost of the interpreter.

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 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 services of a language interpreter or 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; provided, if the court determines that a person needing the services of a language interpreter is indigent, the court may waive all or part of the costs or require the payment of costs in installments.

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~~ the payment as a service charge for the acceptance of ~~such~~ the 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~~ cards.

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 8. REPEALER 19 O.S. 1991, Sections 771, 774, 775, 776, 777 and 778, are hereby repealed.

SECTION 9. This act shall become effective November 1, 1999.

Passed the House of Representatives the 27th day of May, 1999.

Speaker of the House of
Representatives

Passed the Senate the 27th day of May, 1999.

President of the Senate