

SB 1451

THE STATE SENATE
Monday, February 21, 2000

Senate Bill No. 1451
As Amended

SENATE BILL NO. 1451 - By: HENRY of the Senate and TOURE of the House.

[criminal procedure - deferral of prosecutions -
confidential information - effective date - emergency]

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

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

1 evidence. ~~Such~~ The photographic record shall be competent evidence
2 of ~~such~~ the property and admissible in any criminal action or
3 proceeding as the best evidence. ~~Return of property~~

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

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

9 2. The return of property to the owner shall be without
10 prejudice to the state or to any person who may have a claim against
11 the property; and

12 3. When ~~a return~~ property is ~~made to the owner~~ returned, the
13 ~~owner~~ recipient shall sign, under penalty of perjury, a declaration
14 of ownership, which shall be retained by the ~~person in charge of the~~
15 ~~property at the~~ police department or sheriff's office.

16 D. As additional consideration for the agreement, the State of
17 Oklahoma shall agree not to file an information if the accused
18 satisfactorily completes the conditions of the agreement.

19 E. The agreement between the accused and the State of Oklahoma
20 may include provisions whereby the accused agrees to be supervised
21 in the community. If the accused is required to be supervised
22 pursuant to the terms of the agreement, the person shall be required
23 to pay a supervision fee to be established by the supervisory

1 agency. The supervision fee shall be paid to the supervisory agency
2 as required by the rules of the supervisory agency. The supervisory
3 agency shall monitor the person for compliance with the conditions
4 of the agreement ~~of the parties~~. The supervisory agency shall
5 report to the district attorney on the progress of the accused, and
6 shall report immediately if the accused fails to report or
7 participate as required by the agreement.

8 F. The agreement between the parties may require the accused to
9 participate or consult with local service providers, including the
10 Department of Human Services, the Department of Mental Health and
11 Substance Abuse Services, the Employment Security Commission,
12 federal services agencies, other state or local agencies, colleges,
13 universities, vocational-technical schools, and private or
14 charitable service organizations. When the accused is required to
15 participate or consult with any service provider, a program fee may
16 be required, unless the fee would impose an unnecessary hardship on
17 the person. The program fee shall be established by the service
18 provider based upon a sliding scale. Any state agency called upon
19 for assistance in a deferred prosecution program by any district
20 attorney shall render ~~such~~ services and assistance as available.
21 Any supervision fee or program fee authorized by this section may be
22 waived in whole or in part when the accused is indigent. No person
23 who is otherwise qualified for a deferred prosecution program shall

1 be denied services or supervision based solely on the person's
2 inability to pay a fee or fees.

3 G. The agreement between the parties may require the accused to
4 pay a victim compensation assessment pursuant to the provisions of
5 Section 142.18 of Title 21 of the Oklahoma Statutes. The amount of
6 ~~such~~ the assessment shall be agreed to by the parties and shall be
7 within the amounts specified in Section 142.18 of Title 21 of the
8 Oklahoma Statutes for the offense charged.

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

14 I. 1. On or after the effective date of this act, each office
15 of the district attorney shall keep a listing of all deferred
16 prosecution agreements in the district attorney's district
17 including, but not limited to, the name and other identifying
18 information of the accused, which shall be open to the public.

19 2. A deferred prosecution agreement entered into prior to the
20 effective date of this act shall not be a record open to the public,
21 unless confidentiality was waived as a condition of the agreement;
22 provided, each office of the district attorney shall keep a complete
23 listing by pseudonym of all agreements in the district attorney's

1 district entered into prior to the effective date of this act that
2 are in progress or have not been terminated. This listing shall be
3 open to the public.

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

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

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

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

19 3. Afford the accused the opportunity to be heard and present
20 evidence, and cross-examine witnesses before a ~~state~~ judge of the
21 district court. The accused shall have ten (10) days from the date
22 of mailing of ~~such~~ the notice to file a written request with the
23 ~~district~~ court clerk for the county in which a charge is pending for

1 ~~such~~ the hearing, after which ~~his~~ the right to ~~such~~ a hearing shall
2 be ~~deemed~~ waived. The burden shall be upon the State of Oklahoma to
3 prove that the accused did not fulfill the conditions of the
4 agreement, and that an information should be filed.

5 B. ~~In the event~~ On and after the effective date of this act, if
6 an agreement is terminated by the State of Oklahoma, the termination
7 document and supporting documentation shall be open to the public.

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

12 SECTION 3. AMENDATORY 22 O.S. 1991, Section 305.4, is
13 amended to read as follows:

14 Section 305.4 If the accused completes the program agreed upon,
15 the State of Oklahoma shall not file the charges against the
16 accused. ~~The records of the accused shall be sealed and not be~~
17 ~~released or viewed except on a limited basis by law enforcement or~~
18 ~~prosecution personnel for the purposes of determining if the accused~~
19 ~~has been diverted. The district attorney shall take all necessary~~
20 ~~measures to ensure that all of the records of the person remain~~
21 ~~confidential.~~

22 SECTION 4. AMENDATORY 22 O.S. 1991, Section 305.5, is
23 amended to read as follows:

1 Section 305.5 A. Information received and collected by any
2 service agency while the accused participates in ~~the~~ a deferred
3 prosecution program shall not be released to any agency or
4 individual that will use the information for dissemination to the
5 general public or be recorded in a computer system that has the
6 potential for connection with national computer files, or be used by
7 a law enforcement agency for the purposes of surveillance and
8 investigation.

9 B. Any information obtained in the course of investigating the
10 suitability of the accused for inclusion in a deferred prosecution
11 program shall remain confidential except for purposes of deferred
12 prosecution programs and shall not be released by any individual or
13 agency without permission from the accused, being advised by
14 counsel.

15 C. The provisions of subsections A and B of this section shall
16 apply only to information relating to deferred prosecution
17 agreements entered into prior to the effective date of this act,
18 unless confidentiality of the information is otherwise required by
19 law.

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

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

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

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

14 SECTION 5. This act shall become effective July 1, 2000.

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

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-15-00 - DO
20 PASS, As Amended and Coauthored.