

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 808

By: Wilkerson of the Senate

and

Braddock of the House

COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; amending 22 O.S. 2001, Section 991b, as amended by Section 19, Chapter 460, O.S.L. 2002 (22 O.S. Supp. 2002, Section 991b), which relates to revocation of suspended sentences; providing for motion, hearing, evidence, and sanction for technical infractions; providing petition, notice, hearing for revocation of suspended sentence after commission of another crime; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 991b, as amended by Section 19, Chapter 460, O.S.L. 2002 (22 O.S. Supp. 2002, Section 991b), is amended to read as follows:

Section 991b. A. Whenever a sentence has been suspended by the court after conviction of a person for any crime, the suspended sentence of ~~said~~ the person may not be revoked, in whole or part, for any cause unless a petition setting forth the grounds for such revocation is filed by the district attorney with the clerk of the sentencing court and competent evidence justifying the revocation of the suspended sentence is presented to the court at a hearing to be held for that purpose ~~within twenty (20) days after the entry of the plea of not guilty to the petition, unless waived by both the state and the defendant~~ as provided in subsection D of this section. The State of Oklahoma may dismiss the petition without prejudice ~~one~~ any time upon good cause shown to the court, ~~provided that any.~~ Any

successor petition alleging a cause for revocation on the same grounds as a prior dismissed petition must be filed within ~~forty-five~~ one (1) year of the dismissal of the previous petition, but not after the period of active supervision of the defendant.

B. Technical infractions of a suspended sentence shall be reported to the district attorney, and a motion for sanctions may be filed by the district attorney with the court. The court may implement orders for disciplinary sanctions on technical infractions, and such orders may include, but are not limited to: referring the defendant to community sentencing, the Community Service Sentencing Program, night and weekend jail incarceration, drug court, substance abuse treatment, and education. Upon filing a motion for sanctions, notice shall be given to the defendant and the defendant's attorney of record within ten (10) days of filing the motion. A hearing shall be conducted within twenty (20) days of the filing of a motion for sanctions. At the hearing the court will hear evidence, and if it appears to the satisfaction of the court that the defendant is guilty of a technical infraction, the court shall sanction the defendant. The court shall first consider a financial sanction and, if inappropriate for the circumstances, next consider incarceration for one (1) or more nights or weekends in the county jail. For purposes of this section, "technical infraction" shall mean any action which violates the terms and conditions of probation, a suspended sentence or a deferred sentence provided the action does not constitute a felony.

C. 1. Where ~~one of the grounds for revocation~~ a violation is the failure of the defendant to make restitution as ordered, the Department of Corrections shall forward to the district attorney all information pertaining to the defendant's failure to make timely restitution as ordered by the court, and ~~said~~ the district attorney shall file a ~~petition setting forth the grounds for revocation~~

motion for disciplinary sanctions with the court as provided in subsection B of this section.

2. The defendant ordered to make restitution can petition the court at any time for remission or a change in the terms of the order of restitution if the defendant undergoes a change of condition which materially affects the ability of the defendant to comply with the court's order.

3. At the motion hearing, ~~if one of the grounds for the petition for revocation is the defendant's failure to make timely restitution as ordered by the court,~~ the court will hear evidence, and if it appears to the satisfaction of the court from such evidence that the terms of the order of restitution create a manifest hardship on the defendant or the immediate family of the defendant, the court may cancel all or any part of the amount still due, or modify the terms or method of payment, dismiss the motion for sanctions, or order a sanction in addition to canceling or modifying restitution payments or schedules.

C. D. Whenever a defendant commits a crime which is a felony while under supervision on a suspended sentence, the district attorney may file a petition for revocation of the suspended sentence. Notice shall be given to the defendant and the defendant's attorney of record within ten (10) days of the filing of a petition for revocation. An evidentiary hearing shall be conducted within thirty (30) days of the notice, unless postponed by agreement of the defendant and district attorney. The court may revoke a portion of the sentence and leave the remaining part not revoked, but suspended for the remainder of the term of the sentence, and under the provisions applying to it. The person whose suspended sentence is being considered for revocation at ~~said~~ the hearing shall have the right to be represented by counsel, to present competent evidence in his or her own behalf and to be confronted by the witnesses against the defendant. Any order of the

court revoking ~~such~~ all or part of a suspended sentence, ~~in whole or in part~~, shall be subject to review on appeal, as in other appeals of criminal cases. Provided, however, that if the crime for which the suspended sentence is given was a felony, the defendant may be allowed bail pending appeal. If the reason for revocation be that the defendant committed a felony, the defendant shall not be allowed bail pending appeal.

SECTION 2. This act shall become effective July 1, 2003.

SECTION 3. 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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