

SB 808

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THE STATE SENATE**  
**Tuesday, February 25, 2003**

**Senate Bill No. 808**

SENATE BILL NO. 808 - By: WILKERSON of the Senate and BRADDOCK of the House.

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 and violations; 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

1 State of Oklahoma may dismiss the petition without prejudice ~~one~~ any  
2 time upon good cause shown to the court, ~~provided that any.~~ Any  
3 successor petition alleging a cause for revocation on the same  
4 grounds as a prior dismissed petition must be filed within ~~forty-~~  
5 ~~five (45) days of the date of the dismissal of the petition~~ one (1)  
6 year of the dismissal of the previous petition, but not after the  
7 period of active supervision of the defendant.

8 B. Technical infractions or violations of a suspended sentence  
9 shall be reported to the district attorney, and a motion for  
10 sanctions may be filed by the district attorney with the court. The  
11 court is authorized to implement standing orders for disciplinary  
12 sanctions on technical infractions and violations, and such standing  
13 orders may include, but are not limited to: referring the defendant  
14 to community sentencing, the Community Service Sentencing Program,  
15 night and weekend jail, drug court, substance abuse treatment, and  
16 education. Upon filing a motion for sanctions, notice shall be  
17 given to the defendant and the defendant's attorney of record within  
18 ten (10) days of filing the motion. A hearing shall be conducted  
19 within twenty (20) days of the filing of a motion for sanctions. At  
20 the hearing the court will hear evidence, and if it appears to the  
21 satisfaction of the court that the defendant is guilty of a  
22 technical infraction or violation, the court shall sanction the  
23 defendant. The court shall first consider a financial sanction and,

1 if inappropriate for the circumstances, next consider a restriction  
2 on liberty interests by one or more nights or weekends in the county  
3 jail. The court shall not revoke the suspended sentence until the  
4 court finds that the technical infractions or violations constitute  
5 a continuing disregard for the rights, safety or authority of  
6 others; and therefore, the defendant poses a danger to public  
7 safety.

8 C. 1. Where ~~one of the grounds for revocation~~ a violation is  
9 the failure of the defendant to make restitution as ordered, the  
10 Department of Corrections shall forward to the district attorney all  
11 information pertaining to the defendant's failure to make timely  
12 restitution as ordered by the court, and ~~said~~ the district attorney  
13 shall file a ~~petition setting forth the grounds for revocation~~  
14 motion for disciplinary sanctions with the court as provided in  
15 subsection B of this section.

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

21 3. At the motion hearing, ~~if one of the grounds for the~~  
22 ~~petition for revocation is the defendant's failure to make timely~~  
23 ~~restitution as ordered by the court,~~ the court will hear evidence,

1 and if it appears to the satisfaction of the court from such  
2 evidence that the terms of the order of restitution create a  
3 manifest hardship on the defendant or the immediate family of the  
4 defendant, the court may cancel all or any part of the amount still  
5 due, or modify the terms or method of payment, dismiss the motion  
6 for sanctions, or order a sanction in addition to canceling or  
7 modifying restitution payments or schedules.

8 C. D. Whenever a defendant commits a crime while under  
9 supervision on a suspended sentence or is a habitual violator of  
10 technical terms and condition of the suspended sentence, the  
11 district attorney may file a petition for revocation of the  
12 suspended sentence. Notice shall be given to the defendant and the  
13 defendant's attorney of record within ten (10) days of the filing of  
14 a petition for revocation. A hearing shall be conducted within  
15 thirty (30) days of the notice, unless postponed by agreement of the  
16 defendant and district attorney. At the hearing, the court shall  
17 hear evidence. The court may revoke a portion of the sentence and  
18 leave the remaining part not revoked, but suspended for the  
19 remainder of the term of the sentence, and under the provisions  
20 applying to it. The person whose suspended sentence is being  
21 considered for revocation at ~~said~~ the hearing shall have the right  
22 to be represented by counsel, to present competent evidence in his  
23 or her own behalf and to be confronted by the witnesses against the

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

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

9 SECTION 3. It being immediately necessary for the preservation  
10 of the public peace, health and safety, an emergency is hereby  
11 declared to exist, by reason whereof this act shall take effect and  
12 be in full force from and after its passage and approval.

13 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-19-03 - DO  
14 PASS, As Coauthored.