ENGROSSED SENATE
BILL NO. 1782

By: Lerblance of the Senate

and

Kiesel of the House

[sentencing - revocation of suspended sentences - per diem rate - effective date - codification emergency]

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 991b, as last amended by Section 1, Chapter 374, O.S.L. 2005 (22 O.S. Supp. 2005, 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 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. The State of Oklahoma may dismiss the petition without prejudice one time upon good cause shown to the court, provided that any successor petition must be filed within forty-five (45) days of the date of the dismissal of the petition.

B. 1. The Department of Corrections shall develop a matrix of technical violations and sanctions to address the violations. The Department shall be authorized to use a violation response and intermediate sanction process based on the sanction matrix to apply to any technical violations of probationers. <u>Prior to a sentence</u>

being suspended, the court shall review the matrix of technical violations and sanctions to address the violations and authorize a standing order. Within four (4) working days of the discovery of the violation, the officer shall initiate the violation response and intermediate sanction process. The sentencing judge may authorize by a standing order any recommended sanctions, which may include, but are not limited to: short-term jail or lockup, day treatment, program attendance, community service, outpatient or inpatient treatment, monetary fines, curfews, or ignition interlock devices on vehicles. The officer shall complete a sanction form, which shall specify the technical violation, sanction, and the action plan to correct the noncompliant behavior resulting in the technical violation. The officer shall refer to the sanctioning matrix to determine the supervision, treatment, and sanctions appropriate to address the noncompliant behavior. The officer shall refer the violation information and recommended response with a sanction plan to the Department of Corrections to be heard by a hearing officer. The Department of Corrections shall develop a sanction matrix, forms, policies and procedures necessary to implement this provision. The Department of Corrections shall establish procedures to hear responses to technical violations and review sanction plans including the following:

a. hearing officers shall report through a chain of command separate from that of the supervising probation officers,

b. the Department shall provide the offender written notice of the violation, the evidence relied upon, and the reason the sanction was imposed,

c. the hearing shall be held unless the offender waives the right to the hearing,

d. hearings shall be electronically recorded, and

e. the Department shall make available to judges and district attorneys a record of all actions taken pursuant to this subsection.

2. The hearing officer shall determine based on a preponderance of the evidence whether a technical violation occurred. Upon a finding that a technical violation occurred, the hearing officer may order the offender to participate in the recommended sanction plan or may modify the plan. Offenders who accept the sanction plan shall sign a violation response sanction form, and the hearing officer shall then impose the sanction. Failure of the offender to comply with the imposed sanction plan shall constitute a violation of the rules and conditions of supervision that may result in a revocation proceeding. If an offender does not voluntarily accept the recommended sanction plan, the Department shall either impose the sanction and allow the offender to appeal to the district court, or request a revocation proceeding as provided by law. Every administrative hearing and sanction imposed by the Department shall be appealable to the district court. <u>In cases of intermediate sanctions requiring short-term jail or lockup, a copy of the standing order issued by the sentencing judge and the technical violation sanction form of the Department shall be given to the sheriff who shall deliver the offender to the designated place of confinement.</u>

C. 1. Where one of the grounds for revocation 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 failure of the defendant to make timely restitution as ordered by the court, and the district attorney shall file a petition setting forth the grounds for revocation.

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 order of the court.

3. At the hearing, if one of the grounds for the petition for revocation is the failure of the defendant 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.

D. 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 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 the 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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 38.2 of Title 57, unless there is created a duplication in numbering, reads as follows:

The state shall appropriate funding to the Department of Corrections for county jail incarceration for intermediate sanctions for eligible felony offenders receiving short-term jail or lockup, under the provisions of Section 991b of Title 22 of the Oklahoma Statutes. The Department of Corrections shall provide such funding

to the sheriff of the county where the offender is incarcerated at a rate of Twenty-four Dollars ($24.00) per day.

SECTION 3. This act shall become effective July 1, 2006.

SECTION 4. 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.

Passed the Senate the 6th day of March, 2006.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2006.

_____
Presiding Officer of the House
of Representatives