

EHB 1267

THE STATE SENATE
Monday, April 11, 2005

ENGROSSED

House Bill No. 1267

As Amended

ENGROSSED HOUSE BILL NO. 1267 - By: INGMIRE of the House and LERBLANCE of the Senate.

[criminal procedure - revocation of suspended sentences, deferred sentences, and supervision fees - effective date]

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. 2004, 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. The State of Oklahoma may dismiss the petition without prejudice one time upon good cause shown to the court,

1 provided that any successor petition must be filed within forty-five
2 (45) days of the date of the dismissal of the petition.

3 B. 1. The Department of Corrections shall develop a matrix of
4 technical violations and sanctions to address the violations. The
5 Department shall be authorized to use a violation response and
6 intermediate sanction process based on the sanction matrix to apply
7 to any technical violations of probationers. Within four (4)
8 working days of the discovery of the violation, the officer shall
9 initiate the violation response and intermediate sanction process.
10 The sentencing judge may authorize any recommended sanctions, which
11 may include, but are not limited to: short-term jail or lockup, day
12 treatment, program attendance, community service, outpatient or
13 inpatient treatment, monetary fines, curfews, or ignition interlock
14 devices on vehicles. The officer shall complete a sanction form,
15 which shall specify the technical violation, sanction, and the
16 action plan to correct the noncompliant behavior resulting in the
17 technical violation. The officer shall refer to the sanctioning
18 matrix to determine the supervision, treatment, and sanctions
19 appropriate to address the noncompliant behavior. The officer shall
20 refer the violation information and recommended response with a
21 sanction plan to the Department of Corrections to be heard by a
22 hearing officer. The Department of Corrections shall develop a
23 sanction matrix, forms, policies and procedures necessary to

1 implement this provision. The Department of Corrections shall
2 establish procedures to hear responses to technical violations and
3 review sanction plans including the following:

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

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

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

12 d. hearings shall be electronically recorded, and

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

16 2. The hearing officer shall determine based on a preponderance
17 of the evidence whether a technical violation occurred. Upon a
18 finding that a technical violation occurred, the hearing officer may
19 order the offender to participate in the recommended sanction plan
20 or may modify the plan. Offenders who accept the sanction plan
21 shall sign a violation response sanction form, and the hearing
22 officer shall then impose the sanction. Failure of the offender to
23 comply with the imposed sanction plan shall constitute a violation

1 of the rules and conditions of supervision that may result in a
2 revocation proceeding. If an offender does not voluntarily accept
3 the recommended sanction plan, the Department shall either impose
4 the sanction and allow the offender to appeal to the district court,
5 or request a revocation proceeding as provided by law. Every
6 administrative hearing and sanction imposed by the Department shall
7 be appealable to the district court.

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

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

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

1 such evidence that the terms of the order of restitution create a
2 manifest hardship on the defendant or the immediate family of the
3 defendant, the court may cancel all or any part of the amount still
4 due, or modify the terms or method of payment.

5 ~~C.~~ D. The court may revoke a portion of the sentence and leave
6 the remaining part not revoked, but suspended for the remainder of
7 the term of the sentence, and under the provisions applying to it.
8 The person whose suspended sentence is being considered for
9 revocation at ~~said~~ the hearing shall have the right to be
10 represented by counsel, to present competent evidence in his or her
11 own behalf and to be confronted by the witnesses against the
12 defendant. Any order of the court revoking ~~such~~ the suspended
13 sentence, in whole or in part, shall be subject to review on appeal,
14 as in other appeals of criminal cases. Provided, however, that if
15 the crime for which the suspended sentence is given was a felony,
16 the defendant may be allowed bail pending appeal. If the reason for
17 revocation be that the defendant committed a felony, the defendant
18 shall not be allowed bail pending appeal.

19 SECTION 2. AMENDATORY 22 O.S. 2001, Section 991c, as
20 last amended by Section 12, Chapter 275, O.S.L. 2004 (22 O.S. Supp.
21 2004, Section 991c), is amended to read as follows:

22 Section 991c. A. Upon a verdict or plea of guilty or upon a
23 plea of nolo contendere, but before a judgment of guilt, the court

1 may, without entering a judgment of guilt and with the consent of
2 the defendant, defer further proceedings upon the specific
3 conditions prescribed by the court not to exceed a five-year period.
4 The court shall first consider restitution among the various
5 conditions it may prescribe. The court may also consider ordering
6 the defendant to:

- 7 1. Pay court costs;
- 8 2. Pay an assessment in lieu of any fine authorized by law for
9 the offense;
- 10 3. Pay any other assessment or cost authorized by law;
- 11 4. Engage in a term of community service without compensation,
12 according to a schedule consistent with the employment and family
13 responsibilities of the defendant;
- 14 5. County jail confinement for a period not to exceed ninety
15 (90) days or the maximum amount of jail time provided for the
16 offense, if it is less than ninety (90) days;
- 17 6. Pay an amount as reimbursement for reasonable attorney fees,
18 to be paid into the court fund, if a court-appointed attorney has
19 been provided to defendant;
- 20 7. Be supervised in the community for a period not to exceed
21 two (2) years. As a condition of any supervision, the defendant
22 shall be required to pay a supervision fee of Forty Dollars (\$40.00)
23 per month. The supervision fee shall be waived in whole or part by

1 the supervisory agency when the accused is indigent. No person
2 shall be denied supervision based solely on the person's inability
3 to pay a fee;

4 8. Pay into the court fund a monthly amount not exceeding Forty
5 Dollars (\$40.00) per month during any period during which the
6 proceedings are deferred when the defendant is not to be supervised
7 in the community. The total amount to be paid into the court fund
8 shall be established by the court and shall not exceed the amount of
9 the maximum fine authorized by law for the offense;

10 9. Make other reparations to the community or victim as
11 required and deemed appropriate by the court;

12 10. Order any conditions which can be imposed for a suspended
13 sentence pursuant to paragraph 1 of subsection A of Section 991a of
14 this title; or

15 11. Any combination of the above provisions.

16 B. In addition to any conditions of supervision provided for in
17 subsection A of this section, the court shall, in the case of a
18 person before the court for the offense of operating or being in
19 control of a motor vehicle while the person was under the influence
20 of alcohol, other intoxicating substance, or a combination of
21 alcohol and another intoxicating substance, or who is before the
22 court for the offense of operating a motor vehicle while the ability
23 of the person to operate such vehicle was impaired due to the

1 consumption of alcohol, require the person to participate in an
2 alcohol and drug substance abuse evaluation program offered by a
3 facility or qualified practitioner certified by the Department of
4 Mental Health and Substance Abuse Services for the purpose of
5 evaluating the receptivity to treatment and prognosis of the person.
6 The court shall order the person to reimburse the facility or
7 qualified practitioner for the evaluation. The Department of Mental
8 Health and Substance Abuse Services shall establish a fee schedule,
9 based upon a person's ability to pay, provided the fee for an
10 evaluation shall not exceed Seventy-five Dollars (\$75.00). The
11 evaluation shall be conducted at a certified facility, the office of
12 a qualified practitioner or at another location as ordered by the
13 court. The facility or qualified practitioner shall, within
14 seventy-two (72) hours from the time the person is assessed, submit
15 a written report to the court for the purpose of assisting the court
16 in its determination of conditions for deferred sentence. No
17 person, agency or facility operating an alcohol and drug substance
18 abuse evaluation program certified by the Department of Mental
19 Health and Substance Abuse Services shall solicit or refer any
20 person evaluated pursuant to this subsection for any treatment
21 program or alcohol and drug substance abuse service in which the
22 person, agency or facility has a vested interest; however, this
23 provision shall not be construed to prohibit the court from ordering

1 participation in or any person from voluntarily utilizing a
2 treatment program or alcohol and drug substance abuse service
3 offered by such person, agency or facility. Any evaluation report
4 submitted to the court pursuant to this subsection shall be handled
5 in a manner which will keep the report confidential from the general
6 public's review. Nothing contained in this subsection shall be
7 construed to prohibit the court from ordering judgment and sentence
8 in the event the defendant fails or refuses to comply with an order
9 of the court to obtain the evaluation required by this subsection.
10 As used in this subsection, "qualified practitioner" means a person
11 with at least a bachelor's degree in substance abuse treatment,
12 mental health or a related health care field and at least two (2)
13 years' experience in providing alcohol abuse treatment, other drug
14 abuse treatment, or both alcohol and other drug abuse treatment who
15 is certified each year by the Department of Mental Health and
16 Substance Abuse Services to provide these assessments. However, any
17 person who does not meet the requirements for a qualified
18 practitioner as defined herein, but who has been previously
19 certified by the Department of Mental Health and Substance Abuse
20 Services to provide alcohol or drug treatment or assessments, shall
21 be considered a qualified practitioner provided all education,
22 experience and certification requirements stated herein are met by

1 September 1, 1995. The court may also require the person to
2 participate in one or both of the following:

- 3 1. An alcohol and drug substance abuse course, pursuant to
4 Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes; and
- 5 2. A victims impact panel program, if such a program is offered
6 in the county where the judgment is rendered. The defendant shall
7 be required to pay a fee, not less than Five Dollars (\$5.00) nor
8 more than Fifteen Dollars (\$15.00) as set by the governing authority
9 of the program and approved by the court, to the victims impact
10 panel program to offset the cost of participation by the defendant,
11 if in the opinion of the court the defendant has the ability to pay
12 such fee.

13 C. Upon completion of the conditions of the deferred judgment,
14 and upon a finding by the court that the conditions have been met
15 and all fines, fees, and monetary assessments have been paid as
16 ordered, the defendant shall be discharged without a court judgment
17 of guilt, and the court shall order the verdict or plea of guilty or
18 plea of nolo contendere to be expunged from the record and the
19 charge shall be dismissed with prejudice to any further action. The
20 procedure to expunge the defendant's record shall be as follows:

- 21 1. All references to the defendant's name shall be deleted from
22 the docket sheet;

1 2. The public index of the filing of the charge shall be
2 expunged by deletion, mark-out or obliteration;

3 3. Upon expungement, the court clerk shall keep a separate
4 confidential index of case numbers and names of defendants which
5 have been obliterated pursuant to the provisions of this section;

6 4. No information concerning the confidential file shall be
7 revealed or released, except upon written order of a judge of the
8 district court; and

9 5. Defendants qualifying under Section 18 of this title may
10 petition the court to have the filing of the indictment and the
11 dismissal expunged from the public index and docket sheet. This
12 section shall not be mutually exclusive of Section 18 of this title.

13 D. Upon order of the court, the provisions of subsection C of
14 this section shall be retroactive.

15 E. Upon violation of any condition of the deferred judgment,
16 the court may enter a judgment of guilt and proceed as provided in
17 Section 991a of this title or may modify any condition imposed.
18 Provided, however, if the deferred judgment is for a felony offense,
19 and the defendant commits another felony offense, the defendant
20 shall not be allowed bail pending appeal.

21 F. The deferred judgment procedure described in this section
22 shall apply only to defendants who have not been previously
23 convicted of a felony offense and have not received a deferred

1 judgment for a felony offense within the ten (10) years previous to
2 the commission of the pending offense.

3 Provided, the court may waive this prohibition upon written
4 application of the district attorney. Both the application and the
5 waiver shall be made a part of the record of the case.

6 G. The deferred judgment procedure described in this section
7 shall not apply to defendants found guilty or who plead guilty or
8 nolo contendere to a sex offense required by law to register
9 pursuant to the Sex Offenders Registration Act.

10 H. Defendants who are supervised by the Department of
11 Corrections pursuant to this section shall be subject to the
12 intermediate sanction process as established in subsection B of
13 Section 991b of this title.

14 SECTION 3. AMENDATORY 22 O.S. 2001, Section 991d, as
15 amended by Section 4, Chapter 474, O.S.L. 2003 (22 O.S. Supp. 2004,
16 Section 991d), is amended to read as follows:

17 Section 991d. A. 1. When the court orders supervision by the
18 Department of Corrections, or the district attorney requires the
19 Department to supervise any person pursuant to a deferred
20 prosecution agreement, the person shall be required to pay a
21 supervision fee of Forty Dollars (\$40.00) per month during the
22 supervision period, unless the fee would impose an unnecessary
23 hardship on the person. In hardship cases, the Department shall

1 expressly waive all or part of the fee. The court shall make
2 payment of the fee a condition of the sentence which shall be
3 imposed whether the supervision is incident to the suspending of
4 execution of a sentence, incident to the suspending of imposition of
5 a sentence, or incident to the deferral of proceedings after a
6 verdict or plea of guilty. ~~The Department shall determine methods~~
7 ~~for payment of the supervision fee, and may charge a reasonable user~~
8 ~~fee for collection of supervision fees electronically~~ court clerk
9 shall collect the supervision fee and may retain ten percent (10%)
10 of such monies to be deposited in the Court Clerk Revolving Fund to
11 cover administrative costs and shall remit the remainder to the
12 Department of Corrections Revolving Fund created pursuant to Section
13 557 of Title 57 of the Oklahoma Statutes. The Department is
14 required to report to the sentencing court any failure of the person
15 to pay supervision fees and to report immediately if the person
16 violates any condition of the sentence.

17 2. When the court imposes a suspended or deferred sentence and
18 does not order supervision by the Department of Corrections, the
19 offender shall be required to pay to the district attorney a
20 supervision fee of Twenty Dollars (\$20.00) per month. In hardship
21 cases, the district attorney shall expressly waive all or part of
22 the fee.

1 3. If restitution is ordered by the court in conjunction with
2 supervision, the supervision fee will be paid in addition to the
3 restitution ordered. In addition to the restitution payment and
4 supervision fee, a reasonable user fee may be charged by the
5 Department of Corrections to cover the expenses of administration of
6 the restitution, except no user fee shall be collected by the
7 Department when restitution payment is collected and disbursed to
8 the victim by the office of the district attorney as provided in
9 Section 991f of this title or Section 991f-1.1 of this title.

10 B. The Pardon and Parole Board shall require a supervision fee
11 to be paid by the parolee as a condition of parole which shall be
12 paid to the Department of Corrections. The Department shall
13 determine the amount of the fee as provided for other persons under
14 supervision by the Department.

15 C. Upon acceptance of an offender by the Department of
16 Corrections whose probation or parole supervision was transferred to
17 Oklahoma through the Interstate Compact Agreement, or upon the
18 assignment of an inmate to any community placement, a fee shall be
19 required to be paid by the offender to the Department of Corrections
20 as provided for other persons under supervision of the Department.

21 D. Except as provided in ~~this~~ subsection A and this subsection,
22 all fees collected pursuant to this section shall be deposited in
23 the Department of Corrections Revolving Fund created pursuant to

1 Section 557 of Title 57 of the Oklahoma Statutes. For the fiscal
2 year ending June 30, 1996, fifty percent (50%) of all collections
3 received from offenders placed on supervision after July 1, 1995,
4 shall be transferred to the credit of the General Revenue Fund of
5 the State Treasury until such time as total transfers equal Three
6 Million Three Hundred Thousand Dollars (\$3,300,000.00).

7 SECTION 4. This act shall become effective November 1, 2005.

8 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 4-6-05 - DO
9 PASS, As Amended.