

3 **Senate Bill No. 1592**
4 **As Amended**

5 SENATE BILL NO. 1592 - By: SHURDEN and RABON of the Senate and
6 SMITHSON of the House.

7 [corrections - revocation of sentence - indigent offender -
8 effective date -
9 emergency]

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

11 SECTION 1. AMENDATORY 22 O.S. 2001, Section 991b, as
12 last amended by Section 1, Chapter 374, O.S.L. 2005 (22 O.S. Supp.
13 2005, Section 991b), is amended to read as follows:

14 Section 991b. A. Whenever a sentence has been suspended by the
15 court after conviction of a person for any crime, the suspended
16 sentence of the person may not be revoked, in whole or part, for any
17 cause unless a petition setting forth the grounds for such
18 revocation is filed by the district attorney with the clerk of the
19 sentencing court and competent evidence justifying the revocation of
20 the suspended sentence is presented to the court at a hearing to be
21 held for that purpose within twenty (20) days after the entry of the
22 plea of not guilty to the petition, unless waived by both the state
23 and the defendant. The State of Oklahoma may dismiss the petition
24 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 cost for any intermediate sanction shall
15 be paid by the defendant, except when the defendant is determined to
16 be indigent and, in that case, the defendant shall pay costs on a
17 sliding scale unless other funding is available or costs are waived
18 by the provider; provided, however, imprisonment in the county jail
19 shall be paid by the Department of Corrections based upon the per
20 diem rate specified in Section 991a-4 of this title and the
21 Department may be reimbursed by the defendant as a condition of
22 probation. The officer shall complete a sanction form, which shall
23 specify the technical violation, sanction, and the action plan to

1 correct the noncompliant behavior resulting in the technical
2 violation. The officer shall refer to the sanctioning matrix to
3 determine the supervision, treatment, and sanctions appropriate to
4 address the noncompliant behavior. The officer shall refer the
5 violation information and recommended response with a sanction plan
6 to the Department of Corrections to be heard by a hearing officer.
7 The Department of Corrections shall develop a sanction matrix,
8 forms, policies and procedures necessary to implement this
9 provision. The Department of Corrections shall establish procedures
10 to hear responses to technical violations and review sanction plans
11 including the following:

- 12 a. hearing officers shall report through a chain of
13 command separate from that of the supervising
14 probation officers,
- 15 b. the Department shall provide the offender written
16 notice of the violation, the evidence relied upon, and
17 the reason the sanction was imposed,
- 18 c. the hearing shall be held unless the offender waives
19 the right to the hearing,
- 20 d. hearings shall be electronically recorded, and
- 21 e. the Department shall make available to judges and
22 district attorneys a record of all actions taken
23 pursuant to this subsection.

1 2. The hearing officer shall determine based on a preponderance
2 of the evidence whether a technical violation occurred. Upon a
3 finding that a technical violation occurred, the hearing officer may
4 order the offender to participate in the recommended sanction plan
5 or may modify the plan. Offenders who accept the sanction plan
6 shall sign a violation response sanction form, and the hearing
7 officer shall then impose the sanction. Failure of the offender to
8 comply with the imposed sanction plan shall constitute a violation
9 of the rules and conditions of supervision that may result in a
10 revocation proceeding. If an offender does not voluntarily accept
11 the recommended sanction plan, the Department shall either impose
12 the sanction and allow the offender to appeal to the district court,
13 or request a revocation proceeding as provided by law. Every
14 administrative hearing and sanction imposed by the Department shall
15 be appealable to the district court.

16 C. 1. Where one of the grounds for revocation is the failure
17 of the defendant to make restitution as ordered, the Department of
18 Corrections shall forward to the district attorney all information
19 pertaining to the failure of the defendant to make timely
20 restitution as ordered by the court, and the district attorney shall
21 file a petition setting forth the grounds for revocation.

22 2. The defendant ordered to make restitution can petition the
23 court at any time for remission or a change in the terms of the

1 order of restitution if the defendant undergoes a change of
2 condition which materially affects the ability of the defendant to
3 comply with the order of the court.

4 3. At the hearing, if one of the grounds for the petition for
5 revocation is the failure of the defendant to make timely
6 restitution as ordered by the court, the court will hear evidence
7 and if it appears to the satisfaction of the court from such
8 evidence that the terms of the order of restitution create a
9 manifest hardship on the defendant or the immediate family of the
10 defendant, the court may cancel all or any part of the amount still
11 due, or modify the terms or method of payment.

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

1 committed a felony, the defendant shall not be allowed bail pending
2 appeal.

3 SECTION 2. This act shall become effective July 1, 2006.

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

8 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-15-06 - DO
9 PASS, As Amended and Coauthored.