

CS for SB 1944

1 THE STATE SENATE
2 Tuesday, February 28, 2006

3 Committee Substitute for
4 Senate Bill No. 1944

5 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1944 - By: CORN of the
6 Senate and INGMIRE of the House.

7 [corrections - intermediate sanctions - jail - court -
8 district attorney - deferred judgment - supervision fees -
9 effective date -
10 emergency]

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

12 SECTION 1. AMENDATORY 22 O.S. 2001, Section 991b, as
13 last amended by Section 1, Chapter 374, O.S.L. 2005 (22 O.S. Supp.
14 2005, Section 991b), is amended to read as follows:

15 Section 991b. A. Whenever a sentence has been suspended by the
16 court after conviction of a person for any crime, the suspended
17 sentence of the person may not be revoked, in whole or part, for any
18 cause unless a petition setting forth the grounds for such
19 revocation is filed by the district attorney with the clerk of the
20 sentencing court and competent evidence justifying the revocation of
21 the suspended sentence is presented to the court at a hearing to be
22 held for that purpose within twenty (20) days after the entry of the
23 plea of not guilty to the petition, unless waived by both the state
24 and the defendant. The State of Oklahoma may dismiss the petition
25 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 is authorized to impose
4 intermediate sanctions for technical violations as defined in this
5 subsection for a suspended sentence or deferred judgment on a felony
6 offense without the necessity of reporting the violation to the
7 district attorney or the district attorney filing a petition for
8 revocation. The Department of Corrections shall develop a matrix of
9 technical violations and sanctions to address ~~the~~ technical
10 violations and shall establish forms, policies and procedures
11 necessary to implement the provisions of this subsection. The
12 ~~Department shall be authorized to use a~~ A technical violation
13 ~~response and intermediate sanction process based on~~ must comply with
14 the intermediate sanction matrix to apply to any technical
15 ~~violations of probationers~~ developed by the Department. The
16 intermediate sanctions process shall require notice and hearing
17 before any sanction is enforced. Within four (4) working days of
18 the discovery of the violation, the supervising officer shall
19 initiate the violation response and intermediate sanction process by
20 completing a sanction form that specifies the technical violation,
21 the sanction recommendation, and a plan of action designed to
22 correct the noncompliant behavior resulting in the technical
23 violation. The sentencing judge may authorize any recommended

1 Intermediate sanctions, ~~which may~~ include, but are not limited to:
2 ~~short-term jail or lockup,~~ day treatment, program assignment and
3 attendance, drug or alcohol testing, community service, outpatient
4 or inpatient treatment, monetary fines payable to the State
5 Treasurer to be placed to the credit of the General Revenue Fund,
6 curfews, electronic monitoring or Global Positioning System (GPS)
7 monitoring, or ignition interlock devices on vehicles. ~~The officer~~
8 ~~shall complete a sanction form, which shall specify the technical~~
9 ~~violation, sanction, and the action plan to correct the noncompliant~~
10 ~~behavior resulting in the technical violation.~~ The supervising
11 officer shall refer to and be limited by the provisions of the
12 sanctioning matrix ~~to determine~~ in determining the supervision,
13 treatment, and ~~sanctions~~ sanction appropriate to address the
14 noncompliant behavior. The supervising officer shall refer the
15 violation information and recommended response with a sanction plan
16 to the Department of Corrections to be heard by ~~a~~ an administrative
17 hearing officer. ~~The Department of Corrections shall develop a~~
18 ~~sanction matrix, forms, policies and procedures necessary to~~
19 ~~implement this provision~~ offender shall be given notice of the
20 hearing at least two (2) days prior to the hearing. The court shall
21 not be required to issue any order for the Department of Corrections
22 to implement any intermediate sanction authorized in this
23 subsection. Any cost incurred for imposing or enforcing an

1 intermediate sanction shall be paid by the defendant, except when
2 the defendant is determined to be indigent and, in that case, the
3 defendant shall pay costs on a sliding scale unless other funding is
4 available or costs are waived by the provider. The Department of
5 Corrections shall establish administrative procedures to hear
6 evidence of violations, responses to technical violations and review
7 sanction plans including the following:

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

21 2. ~~The~~ Based upon a preponderance of the evidence, the hearing
22 officer shall determine ~~based on a preponderance of the evidence~~
23 whether a technical violation occurred. Upon a finding that a

1 technical violation occurred, the hearing officer may order the
2 offender to participate in either the recommended sanction plan or
3 ~~may~~ modify the plan based on the sanction matrix and the technical
4 violation found to have occurred. Offenders who accept the sanction
5 plan shall sign a violation response sanction form, and the hearing
6 officer shall then impose the sanction. Failure of the offender to
7 comply with the imposed sanction plan shall constitute a violation
8 of the rules and conditions of supervision that may result in a
9 revocation proceeding. If an offender does not voluntarily accept
10 the recommended sanction plan, the Department shall either impose
11 the sanction and ~~allow the offender to appeal to the district court,~~
12 or request a revocation proceeding as provided by law. ~~Every~~
13 ~~administrative hearing and sanction imposed by the Department shall~~
14 ~~be appealable to the district court.~~ Nothing in this subsection
15 shall be construed to preclude the district attorney or the court
16 from ordering the offender to comply with the recommended sanction
17 plan proposed by the supervising officer or the administrative
18 hearing officer.

19 3. An intermediate sanction shall not include any term of
20 confinement in any jail or other lock-up unless specifically ordered
21 by the court. The cost of such confinement, if ordered by the
22 court, shall be the same as provided for the Community Service
23 Sentencing Program in Section 991a-4.1 of Title 22 of the Oklahoma

1 Statutes and shall be the responsibility of the Department of
2 Corrections only when ordered as an intermediate sanction. An
3 intermediate sanction for confinement shall be limited to a term of
4 not more than five (5) continuous days or a short-term period of
5 nights or weekends.

6 4. Any person who demonstrates blatant disregard for the rules
7 and conditions of probation or who incurs multiple technical
8 violations demonstrating an inability to comply with the rules and
9 conditions of probation shall be reported to the district attorney
10 for either an intermediate sanction or a petition for revocation, in
11 whole or part.

12 ~~C.~~ 5. Any district attorney receiving a report of any probation
13 violation is authorized to use intermediate sanctions. The district
14 attorney may use an intermediate sanction in lieu of an accelerated
15 deferred judgment, or in conjunction with a petition for partial
16 revocation or pending filing or hearing on a petition for
17 revocation, in whole or part. Intermediate sanctions may be imposed
18 by the district attorney for any offense that if revoked would
19 require the defendant to be imprisoned in the custody of the
20 Department of Corrections. The district attorney may utilize the
21 intermediate sanctions matrix developed by the Department of
22 Corrections in determining the appropriate violation response and
23 may either use the administrative hearing officers provided by the

1 Department of Corrections or negotiate the sanction with the
2 defendant. The defendant shall pay the cost of intermediate
3 sanctions, except when the defendant is determined to be indigent;
4 and, in that case, the defendant shall pay costs on a sliding scale
5 unless other funding is available or costs are waived by the
6 provider.

7 6. The court, upon the filing of a petition for revocation, in
8 whole or part, may order an intermediate sanction for any probation
9 violation. The court may order an intermediate sanction pending a
10 hearing on a petition for revocation, or to enforce an intermediate
11 sanction imposed by the Department of Corrections or the district
12 attorney, or as a disposition of a petition for revocation, in whole
13 or part.

14 7. As used in this subsection, "technical violation" means any
15 infraction or violation of any rule or condition of the sentence or
16 supervision that does not constitute a new crime, a failed
17 urinalysis test, or failure to report to a probation officer.

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

1 implement an intermediate sanction process as provided in this
2 section.

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

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

17 D. ~~The~~ At the hearing on a petition for revocation, the court
18 may revoke a portion of the sentence and leave the remaining part
19 not revoked, but suspended for the remainder of the term of the
20 sentence, and under the provisions applying to it. The court may
21 order an intermediate sanction which may include any sanction or
22 combination of sanctions, including jail. The court may order a
23 jail term in lieu of revoking any deferred or suspended sentence to

1 imprisonment. The person whose suspended sentence is being
2 considered for revocation at the hearing shall have the right to be
3 represented by counsel, to present competent evidence in his or her
4 own behalf and to be confronted by the witnesses against the
5 defendant. Any order of the court revoking the suspended sentence,
6 in whole or in part, shall be subject to review on appeal, as in
7 other appeals of criminal cases. Provided, however, that if the
8 crime for which the suspended sentence is given was a felony, the
9 defendant may be allowed bail pending appeal. If the reason for
10 revocation ~~be~~ is that the defendant committed a felony, the
11 defendant shall not be allowed bail pending appeal.

12 SECTION 2. AMENDATORY 22 O.S. 2001, Section 991c, as
13 last amended by Section 2, Chapter 374, O.S.L. 2005 (22 O.S. Supp.
14 2005, Section 991c), is amended to read as follows:

15 Section 991c. A. Upon a verdict or plea of guilty or upon a
16 plea of nolo contendere, but before a judgment of guilt, the court
17 may, without entering a judgment of guilt and with the consent of
18 the defendant, defer further proceedings upon the specific
19 conditions prescribed by the court not to exceed a five-year period.
20 The court shall first consider restitution among the various
21 conditions it may prescribe. The court may also consider ordering
22 the defendant to:

23 1. Pay court costs;

- 1 2. Pay an assessment in lieu of any fine authorized by law for
2 the offense;
- 3 3. Pay any other assessment or cost authorized by law;
- 4 4. Engage in a term of community service without compensation,
5 according to a schedule consistent with the employment and family
6 responsibilities of the defendant;
- 7 5. County jail confinement for a period not to exceed ninety
8 (90) days or the maximum amount of jail time provided for the
9 offense, if it is less than ninety (90) days;
- 10 6. Pay an amount as reimbursement for reasonable attorney fees,
11 to be paid into the court fund, if a court-appointed attorney has
12 been provided to defendant;
- 13 7. Be supervised in the community for a period not to exceed
14 two (2) years. As a condition of any supervision, the defendant
15 shall be required to pay a supervision fee of Forty Dollars (\$40.00)
16 per month. The supervision fee shall be waived in whole or part by
17 the supervisory agency when the accused is indigent. No person
18 shall be denied supervision based solely on the person's inability
19 to pay a fee;
- 20 8. Pay into the court fund a monthly amount not exceeding Forty
21 Dollars (\$40.00) per month during any period during which the
22 proceedings are deferred when the defendant is not to be supervised
23 in the community. The total amount to be paid into the court fund

1 shall be established by the court and shall not exceed the amount of
2 the maximum fine authorized by law for the offense;

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

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

8 11. Any combination of the above provisions.

9 B. In addition to any conditions of supervision provided for in
10 subsection A of this section, the court shall, in the case of a
11 person before the court for the offense of operating or being in
12 control of a motor vehicle while the person was under the influence
13 of alcohol, other intoxicating substance, or a combination of
14 alcohol and another intoxicating substance, or who is before the
15 court for the offense of operating a motor vehicle while the ability
16 of the person to operate such vehicle was impaired due to the
17 consumption of alcohol, require the person to participate in an
18 alcohol and drug substance abuse evaluation program offered by a
19 facility or qualified practitioner certified by the Department of
20 Mental Health and Substance Abuse Services for the purpose of
21 evaluating the receptivity to treatment and prognosis of the person.
22 The court shall order the person to reimburse the facility or
23 qualified practitioner for the evaluation. The Department of Mental

1 Health and Substance Abuse Services shall establish a fee schedule,
2 based upon a person's ability to pay, provided the fee for an
3 evaluation shall not exceed Seventy-five Dollars (\$75.00). The
4 evaluation shall be conducted at a certified facility, the office of
5 a qualified practitioner or at another location as ordered by the
6 court. The facility or qualified practitioner shall, within
7 seventy-two (72) hours from the time the person is assessed, submit
8 a written report to the court for the purpose of assisting the court
9 in its determination of conditions for deferred sentence. No
10 person, agency or facility operating an alcohol and drug substance
11 abuse evaluation program certified by the Department of Mental
12 Health and Substance Abuse Services shall solicit or refer any
13 person evaluated pursuant to this subsection for any treatment
14 program or alcohol and drug substance abuse service in which the
15 person, agency or facility has a vested interest; however, this
16 provision shall not be construed to prohibit the court from ordering
17 participation in or any person from voluntarily utilizing a
18 treatment program or alcohol and drug substance abuse service
19 offered by such person, agency or facility. Any evaluation report
20 submitted to the court pursuant to this subsection shall be handled
21 in a manner which will keep the report confidential from the general
22 public's review. Nothing contained in this subsection shall be
23 construed to prohibit the court from ordering judgment and sentence

1 in the event the defendant fails or refuses to comply with an order
2 of the court to obtain the evaluation required by this subsection.
3 As used in this subsection, "qualified practitioner" means a person
4 with at least a bachelor's degree in substance abuse treatment,
5 mental health or a related health care field and at least two (2)
6 years' experience in providing alcohol abuse treatment, other drug
7 abuse treatment, or both alcohol and other drug abuse treatment who
8 is certified each year by the Department of Mental Health and
9 Substance Abuse Services to provide these assessments. However, any
10 person who does not meet the requirements for a qualified
11 practitioner as defined herein, but who has been previously
12 certified by the Department of Mental Health and Substance Abuse
13 Services to provide alcohol or drug treatment or assessments, shall
14 be considered a qualified practitioner provided all education,
15 experience and certification requirements stated herein are met by
16 September 1, 1995. The court may also require the person to
17 participate in one or both of the following:

- 18 1. An alcohol and drug substance abuse course, pursuant to
19 Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes; and
- 20 2. A victims impact panel program, if such a program is offered
21 in the county where the judgment is rendered. The defendant shall
22 be required to pay a fee, not less than Five Dollars (\$5.00) nor
23 more than Fifteen Dollars (\$15.00) as set by the governing authority

1 of the program and approved by the court, to the victims impact
2 panel program to offset the cost of participation by the defendant,
3 if in the opinion of the court the defendant has the ability to pay
4 such fee.

5 C. Upon completion of the conditions of the deferred judgment,
6 and upon a finding by the court that the conditions have been met
7 and all fines, fees, and monetary assessments have been paid as
8 ordered, the defendant shall be discharged without a court judgment
9 of guilt, and the court shall order the verdict or plea of guilty or
10 plea of nolo contendere to be expunged from the record and the
11 charge shall be dismissed with prejudice to any further action. The
12 procedure to expunge the defendant's record shall be as follows:

13 1. All references to the defendant's name shall be deleted from
14 the docket sheet;

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

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

20 4. No information concerning the confidential file shall be
21 revealed or released, except upon written order of a judge of the
22 district court or upon written request by the named defendant to the

1 court clerk for the purpose of updating the defendant's criminal
2 history record with the Oklahoma State Bureau of Investigation; and

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

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

9 E. Upon violation of any condition of the deferred judgment,
10 the court may enter a judgment of guilt and proceed as provided in
11 Section 991a of this title or may modify any condition imposed.
12 Provided, however, if the deferred judgment is for a felony offense,
13 and the defendant commits another felony offense, the defendant
14 shall not be allowed bail pending appeal.

15 F. The deferred judgment procedure described in this section
16 shall apply only to defendants who have not been previously
17 convicted of a felony offense and have not received a deferred
18 judgment for a felony offense within the ten (10) years previous to
19 the commission of the pending offense.

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

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

5 H. Defendants who are supervised by the Department of
6 Corrections for felony offenses pursuant to this section shall be
7 subject to the intermediate sanction process as established in
8 ~~subsection B of~~ Section 991b of this title.

9 SECTION 3. AMENDATORY 22 O.S. 2001, Section 991d, as
10 last amended by Section 3, Chapter 374, O.S.L. 2005 (22 O.S. Supp.
11 2005, Section 991d), is amended to read as follows:

12 Section 991d. A. 1. When the court orders supervision by the
13 Department of Corrections, or the district attorney requires the
14 Department to supervise any person pursuant to a deferred
15 prosecution agreement, the person shall be required to pay a
16 supervision fee of Forty Dollars (\$40.00) per month during the
17 supervision period, unless the fee would impose an unnecessary
18 hardship on the person. In hardship cases, the Department shall
19 expressly waive all or part of the fee. The court shall make
20 payment of the fee a condition of the sentence which shall be
21 imposed whether the supervision is incident to the suspending of
22 execution of a sentence, incident to the suspending of imposition of
23 a sentence, or incident to the deferral of proceedings after a

1 verdict or plea of guilty. The ~~court clerk~~ Department of
2 Corrections shall collect the supervision fee and ~~may retain ten~~
3 ~~percent (10%) of such monies to be deposited in the Court Clerk~~
4 ~~Revolving Fund to cover administrative costs and shall remit the~~
5 ~~remainder to the Department of Corrections Revolving Fund created~~
6 ~~pursuant to Section 557 of Title 57 of the Oklahoma Statutes.~~ The
7 Department is required to report to the sentencing court any failure
8 of the person to pay supervision fees and to report immediately if
9 the person violates any condition of the sentence.

10 2. When the court imposes a suspended or deferred sentence and
11 does not order supervision by the Department of Corrections, the
12 offender shall be required to pay to the district attorney a
13 supervision fee of Twenty Dollars (\$20.00) per month. In hardship
14 cases, the district attorney shall expressly waive all or part of
15 the fee.

16 3. If restitution is ordered by the court in conjunction with
17 supervision, the supervision fee will be paid in addition to the
18 restitution ordered. In addition to the restitution payment and
19 supervision fee, a reasonable user fee may be charged by the
20 Department of Corrections to cover the expenses of administration of
21 the restitution, except no user fee shall be collected by the
22 Department when restitution payment is collected and disbursed to

1 the victim by the office of the district attorney as provided in
2 Section 991f of this title or Section 991f-1.1 of this title.

3 B. The Pardon and Parole Board shall require a supervision fee
4 to be paid by the parolee as a condition of parole which shall be
5 paid to the Department of Corrections. The Department shall
6 determine the amount of the fee as provided for other persons under
7 supervision by the Department.

8 C. Upon acceptance of an offender by the Department of
9 Corrections whose probation or parole supervision was transferred to
10 Oklahoma through the Interstate Compact Agreement, or upon the
11 assignment of an inmate to any community placement, a fee shall be
12 required to be paid by the offender to the Department of Corrections
13 as provided for other persons under supervision of the Department.

14 D. Except as provided in paragraph 2 of subsection A and of
15 this subsection section, all fees collected pursuant to this section
16 shall be deposited in the Department of Corrections Revolving Fund
17 created pursuant to Section 557 of Title 57 of the Oklahoma
18 Statutes. For the fiscal year ending June 30, 1996, fifty percent
19 (50%) of all collections received from offenders placed on
20 supervision after July 1, 1995, shall be transferred to the credit
21 of the General Revenue Fund of the State Treasury until such time as
22 total transfers equal Three Million Three Hundred Thousand Dollars
23 (\$3,300,000.00).

1 SECTION 4. This act shall become effective July 1, 2006.

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

6 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-22-06 - DO
7 PASS, As Amended and Coauthored.