

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1267

By: Ingmire

AS INTRODUCED

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. 2004, Section 991b), which relates to revocation for suspended sentences; authorizing the Department of Corrections to respond with intermediate sanctions for technical violations of probation; stating time period to respond to technical violations; providing intermediate sanctions; requiring certain forms; requiring the Department of Corrections to develop sanction matrix, forms, policies and procedures; providing for certain hearing; establishing procedures for certain hearing; requiring preponderance of evidence for certain determination; stating authority of hearing officers; allowing offender to accept sanctions; providing consequences for failure to comply; providing for revocation proceedings or appeal when sanction is not voluntarily accepted by offender; allowing appeal from administrative hearing; and providing an 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, 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. Within four (4) working days of the discovery of the violation, the officer shall initiate the violation response and intermediate sanction process, which may include, but is not limited to: short-term jail or lockup; sanction center placement; day treatment; and program attendance, community service, or outpatient or inpatient treatment. 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.

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 ~~defendant's~~ failure of the defendant to make timely restitution as ordered by the court, and ~~said~~ 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 ~~court's~~ order of the court.

3. At the hearing, if one of the grounds for the petition for revocation is the ~~defendant's~~ 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.

~~C.~~ 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 ~~said~~ 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 ~~such~~ 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. This act shall become effective November 1, 2005.

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