STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1944 By: Corn

AS INTRODUCED

An Act relating to corrections; amending 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), which relates to revocation of sentence; authorizing the Department of Corrections to impose certain intermediate sanctions without reporting certain violation to district attorney; directing certain forms, policies and procedures be established; requiring certain compliance to certain matrix; requiring notice and hearing; providing certain hearings before administrative hearing officer; adding GPS and electronic monitoring to intermediate sanctions; clarifying language; setting notification time period to offender; construing authority of court; directing costs be paid by offender; providing for cost of indigent offender; directing the Department of Corrections to establish administrative procedures to hear evidence of violations, responses, and sanction plans; establishing preponderance of evidence for determination of violation; construing authority of court and district attorney to order compliance; defining term; authorizing the court and district attorney to use certain intermediate sanctions for certain violations; allowing use of certain administrative hearing officers; amending 22 O.S. 2001, Section 991c, as last amended by Section 2, Chapter 374, O.S.L. 2005 (22 O.S. Supp. 2005, Section 991c), which relates to deferred judgment; limiting felony offenses to intermediate sanctions; amending 22 O.S. 2001, Section 991d, as last amended by Section 3, Chapter 374, O.S.L. 2005 (22 O.S. Supp. 2005, Section 991d), which relates to supervision fees; deleting provision for certain percentage fee to court clerk; providing an effective date; and declaring an 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 is authorized to impose intermediate sanctions for technical violations as defined in this subsection for a suspended sentence or deferred judgment on a felony offense without the necessity of reporting the violation to the district attorney or the district attorney filing a petition for revocation. The Department of Corrections shall develop a matrix of technical violations and sanctions to address ~~the~~ technical violations and shall establish forms, policies and procedures necessary to implement the provisions of this subsection. ~~The Department shall be authorized to use a~~ A technical violation response ~~and intermediate sanction process based on~~ must comply with the intermediate sanction matrix ~~to apply to any technical violations of probationers~~ developed by the Department. The intermediate sanctions process shall require notice and hearing before any sanction is enforced. Within four (4) working days of the discovery of the violation, the supervising officer shall initiate the violation response and intermediate sanction process by completing a sanction form that specifies the technical violation, the sanction recommendation, and a plan of action designed to correct the noncompliant behavior resulting in the technical violation. ~~The sentencing judge may authorize any recommended~~

Intermediate 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 payable to the State General Fund, curfews, electronic monitoring or Global Positioning System (GPS) monitoring, 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 supervising officer shall refer to and be limited by the provisions of the sanctioning matrix ~~to determine~~ in determining the supervision, treatment, and ~~sanctions~~ sanction appropriate to address the noncompliant behavior. The supervising officer shall refer the violation information and recommended response with a sanction plan to the Department of Corrections to be heard by ~~a~~ an administrative hearing officer. The ~~Department of Corrections shall develop a sanction matrix, forms, policies and procedures necessary to implement this provision~~ offender shall be given notice of the hearing at least two (2) days prior to the hearing. The court shall not be required to issue any order for the Department of Corrections to implement any intermediate sanction authorized in this subsection; however, the court may issue a standing order authorizing the Department of Corrections to impose intermediate sanctions for technical violations after notice and hearing as provided in this subsection. Any cost incurred for imposing or enforcing an intermediate sanction shall be paid by the defendant, except when the defendant is determined to be indigent and, in that case, the defendant shall pay costs on a sliding scale unless other funding is available or costs are waived by the provider. The Department of Corrections shall establish administrative procedures to hear evidence of violations, 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, notice of hearing, 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~~ Based upon a preponderance of the evidence, 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 either the recommended sanction plan or ~~may~~ modify the plan based on the sanction matrix and the technical violation found to have occurred. 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. Nothing in this subsection shall be construed to preclude the district attorney or the court from implementing an intermediate sanctions process or ordering the

offender to comply with the recommended sanction plan proposed by the supervising officer or the administrative hearing officer.

3. As used in this subsection, "technical violation" means any infraction or violation of any rule or condition of the sentence or supervision that does not constitute a new crime or failure to report to a probation officer.

C. Any district attorney receiving a report of any probation violation is authorized to use intermediate sanctions before filing a petition for revocation or partial revocation. The district attorney may use intermediate sanctions in lieu of an accelerated deferred judgment, or in conjunction with a petition for partial revocation or pending hearing on a petition for revocation, in whole or part. Intermediate sanctions may be imposed by the district attorney for any offense that if revoked would require the defendant to be imprisoned in the custody of the Department of Corrections. The district attorney shall utilize the intermediate sanctions matrix developed by the Department of Corrections in determining the appropriate violation response and shall have access to the administrative hearing officers provided by the Department of Corrections for any hearing on probation violations. The defendant shall pay the cost of intermediate sanctions, except when the defendant is determined to be indigent and, in that case, the defendant shall pay costs on a sliding scale unless other funding is available or costs are waived by the provider.

D. The court may on its own motion, by ex parte hearing, or upon a petition for revocation, in whole or part, order an intermediate sanction for any violation upon notice and recommendation from the supervising officer or the district attorney. In addition, the court may order an intermediate sanction pending a hearing on a petition for revocation, or in conjunction with a partial revocation for technical violations based upon the sanctions matrix established by the Department of Corrections.

E. 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 either file a petition setting forth the grounds for revocation or implement an intermediate sanction process as provided in subsections B or C of this section.

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 on a petition for revocation, 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.~~ F. 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 court may order an intermediate sanction pending a hearing on a petition for revocation or revoke a portion of the sentence in conjunction with an intermediate sanction. 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~~ is that the defendant committed a felony, the defendant shall not be allowed bail pending appeal.

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

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

1. Pay court costs;

2. Pay an assessment in lieu of any fine authorized by law for the offense;

3. Pay any other assessment or cost authorized by law;

4. Engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the defendant;

5. County jail confinement for a period not to exceed ninety (90) days or the maximum amount of jail time provided for the offense, if it is less than ninety (90) days;

6. Pay an amount as reimbursement for reasonable attorney fees, to be paid into the court fund, if a court-appointed attorney has been provided to defendant;

7. Be supervised in the community for a period not to exceed two (2) years. As a condition of any supervision, the defendant shall be required to pay a supervision fee of Forty Dollars ($40.00) per month. The supervision fee shall be waived in whole or part by the supervisory agency when the accused is indigent. No person shall be denied supervision based solely on the person's inability to pay a fee;

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

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

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

11. Any combination of the above provisions.

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

The court shall order the person to reimburse the facility or qualified practitioner for the evaluation. The Department of Mental Health and Substance Abuse Services shall establish a fee schedule, based upon a person's ability to pay, provided the fee for an evaluation shall not exceed Seventy-five Dollars ($75.00). The evaluation shall be conducted at a certified facility, the office of a qualified practitioner or at another location as ordered by the court. The facility or qualified practitioner shall, within seventy-two (72) hours from the time the person is assessed, submit a written report to the court for the purpose of assisting the court in its determination of conditions for deferred sentence. No person, agency or facility operating an alcohol and drug substance abuse evaluation program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated pursuant to this subsection for any treatment program or alcohol and drug substance abuse service in which the person, agency or facility has a vested interest; however, this provision shall not be construed to prohibit the court from ordering participation in or any person from voluntarily utilizing a treatment program or alcohol and drug substance abuse service offered by such person, agency or facility. Any evaluation report submitted to the court pursuant to this subsection shall be handled in a manner which will keep the report confidential from the general public's review. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence in the event the defendant fails or refuses to comply with an order of the court to obtain the evaluation required by this subsection. As used in this subsection, "qualified practitioner" means a person with at least a bachelor's degree in substance abuse treatment, mental health or a related health care field and at least two (2) years' experience in providing alcohol abuse treatment, other drug abuse treatment, or both alcohol and other drug abuse treatment who

is certified each year by the Department of Mental Health and Substance Abuse Services to provide these assessments. However, any person who does not meet the requirements for a qualified practitioner as defined herein, but who has been previously certified by the Department of Mental Health and Substance Abuse Services to provide alcohol or drug treatment or assessments, shall be considered a qualified practitioner provided all education, experience and certification requirements stated herein are met by September 1, 1995. The court may also require the person to participate in one or both of the following:

1. An alcohol and drug substance abuse course, pursuant to Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes; and

2. A victims impact panel program, if such a program is offered in the county where the judgment is rendered. The defendant shall be required to pay a fee, not less than Five Dollars ($5.00) nor more than Fifteen Dollars ($15.00) as set by the governing authority of the program and approved by the court, to the victims impact panel program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee.

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

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

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

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

4. No information concerning the confidential file shall be revealed or released, except upon written order of a judge of the district court or upon written request by the named defendant to the court clerk for the purpose of updating the defendant's criminal history record with the Oklahoma State Bureau of Investigation; and

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

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

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

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

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

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

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

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

Section 991d. A. 1. When the court orders supervision by the Department of Corrections, or the district attorney requires the Department to supervise any person pursuant to a deferred prosecution agreement, the person shall be required to pay a supervision fee of Forty Dollars ($40.00) per month during the supervision period, unless the fee would impose an unnecessary hardship on the person. In hardship cases, the Department shall expressly waive all or part of the fee. The court shall make payment of the fee a condition of the sentence which shall be imposed whether the supervision is incident to the suspending of execution of a sentence, incident to the suspending of imposition of a sentence, or incident to the deferral of proceedings after a verdict or plea of guilty. The ~~court clerk~~ Department of Corrections shall collect the supervision fee ~~and may retain ten percent (10%) of such monies to be deposited in the Court Clerk Revolving Fund to cover administrative costs and shall remit the remainder to the Department of Corrections Revolving Fund created pursuant to Section 557 of Title 57 of the Oklahoma Statutes~~. The Department is required to report to the sentencing court any failure of the person to pay supervision fees and to report immediately if the person violates any condition of the sentence.

2. When the court imposes a suspended or deferred sentence and does not order supervision by the Department of Corrections, the offender shall be required to pay to the district attorney a supervision fee of Twenty Dollars ($20.00) per month. In hardship

cases, the district attorney shall expressly waive all or part of the fee.

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

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

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

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

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

SECTION 5. 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.

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