

THE STATE SENATE  
Monday, February 26, 2007

Committee Substitute for  
**Senate Bill No. 848**

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 848 - By: JOHNSON  
(Constance) of the Senate and CARGILL of the House.

An Act relating to criminal procedure and corrections;  
amending 22 O.S. 2001, Section 991c, as last amended by  
Section 2, Chapter 374, O.S.L. 2005 (22 O.S. Supp. 2006,  
Section 991c), which relates to deferred judgment; providing  
for expungement of certain records upon completion of  
deferred sentence; amending 22 O.S. 2001, Section 18, as  
last amended by Section 1, Chapter 406, O.S.L. 2004 (22 O.S.  
Supp. 2006, Section 18), which relates to expungement of  
records; allowing deferred judgment to be expunged; amending  
57 O.S. 2001, Sections 512 and 513, which relate to parole  
and discharge of prisoner; requiring parolees and released  
inmates to have identification card; modifying agency name;  
directing the Department of Corrections to implement process  
to identify, maintain, control and issue identification  
cards for inmates upon release or parole; making cost of  
identification card an inmate expense; allowing out-of-state  
identification cards under certain circumstance; prohibiting  
release or parole without identification; directing  
cooperation from the Department of Public Safety to process  
identification cards for inmates; providing address change  
and responsibility; limiting period to maintain certain  
identification cards; limiting certain authority;  
prohibiting charge in excess of actual fee; amending Section  
3, Chapter 346, O.S.L. 2003 (57 O.S. Supp. 2006, Section  
614), which relates to faith-based programs; directing  
certain faith-based pilot programs be implemented by the  
Department of Corrections; requiring promulgation of certain  
rules; requiring certain training for certain persons;  
providing an effective date; and declaring an emergency.

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

1 SECTION 1. AMENDATORY 22 O.S. 2001, Section 991c, as  
2 last amended by Section 2, Chapter 374, O.S.L. 2005 (22 O.S. Supp.  
3 2006, Section 991c), is amended to read as follows:

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

- 12 1. Pay court costs;
- 13 2. Pay an assessment in lieu of any fine authorized by law for  
14 the offense;
- 15 3. Pay any other assessment or cost authorized by law;
- 16 4. Engage in a term of community service without compensation,  
17 according to a schedule consistent with the employment and family  
18 responsibilities of the defendant;
- 19 5. County jail confinement for a period not to exceed ninety  
20 (90) days or the maximum amount of jail time provided for the  
21 offense, if it is less than ninety (90) days;

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

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

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

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

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

22          11. Any combination of the above provisions.

1           B. In addition to any conditions of supervision provided for in  
2 subsection A of this section, the court shall, in the case of a  
3 person before the court for the offense of operating or being in  
4 control of a motor vehicle while the person was under the influence  
5 of alcohol, other intoxicating substance, or a combination of  
6 alcohol and another intoxicating substance, or who is before the  
7 court for the offense of operating a motor vehicle while the ability  
8 of the person to operate such vehicle was impaired due to the  
9 consumption of alcohol, require the person to participate in an  
10 alcohol and drug substance abuse evaluation program offered by a  
11 facility or qualified practitioner certified by the Department of  
12 Mental Health and Substance Abuse Services for the purpose of  
13 evaluating the receptivity to treatment and prognosis of the person.  
14 The court shall order the person to reimburse the facility or  
15 qualified practitioner for the evaluation. The Department of Mental  
16 Health and Substance Abuse Services shall establish a fee schedule,  
17 based upon a person's ability to pay, provided the fee for an  
18 evaluation shall not exceed Seventy-five Dollars (\$75.00). The  
19 evaluation shall be conducted at a certified facility, the office of  
20 a qualified practitioner or at another location as ordered by the  
21 court. The facility or qualified practitioner shall, within  
22 seventy-two (72) hours from the time the person is assessed, submit  
23 a written report to the court for the purpose of assisting the court

1 in its determination of conditions for deferred sentence. No  
2 person, agency or facility operating an alcohol and drug substance  
3 abuse evaluation program certified by the Department of Mental  
4 Health and Substance Abuse Services shall solicit or refer any  
5 person evaluated pursuant to this subsection for any treatment  
6 program or alcohol and drug substance abuse service in which the  
7 person, agency or facility has a vested interest; however, this  
8 provision shall not be construed to prohibit the court from ordering  
9 participation in or any person from voluntarily utilizing a  
10 treatment program or alcohol and drug substance abuse service  
11 offered by such person, agency or facility. Any evaluation report  
12 submitted to the court pursuant to this subsection shall be handled  
13 in a manner which will keep the report confidential from the general  
14 public's review. Nothing contained in this subsection shall be  
15 construed to prohibit the court from ordering judgment and sentence  
16 in the event the defendant fails or refuses to comply with an order  
17 of the court to obtain the evaluation required by this subsection.  
18 As used in this subsection, "qualified practitioner" means a person  
19 with at least a bachelor's degree in substance abuse treatment,  
20 mental health or a related health care field and at least two (2)  
21 years' experience in providing alcohol abuse treatment, other drug  
22 abuse treatment, or both alcohol and other drug abuse treatment who  
23 is certified each year by the Department of Mental Health and

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

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

20 C. Upon completion of the conditions of the deferred judgment,  
21 and upon a finding by the court that the conditions have been met  
22 and all fines, fees, and monetary assessments have been paid as  
23 ordered, the defendant shall be discharged without a court judgment

1 of guilt, and the charge shall be dismissed with prejudice. The  
2 court shall order ~~the verdict or plea of guilty or plea of nolo~~  
3 ~~contendere~~ all records and references to the defendant's name, the  
4 arrest, charge, plea, and disposition of the case to be expunged  
5 from the record and ~~the charge shall be dismissed with prejudice to~~  
6 ~~any further action.~~ The procedure to expunge the defendant's record  
7 shall be as follows:

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

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

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

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

20 5. ~~Defendants qualifying under~~ provided in Section 18 of this  
21 title may petition the court to have the filing of the indictment  
22 and the dismissal expunged from the public index and docket sheet.

1 ~~This section shall not be mutually exclusive of Section 18 of this~~  
2 ~~title.~~

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

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

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

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

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

1 H. Defendants who are supervised by the Department of  
2 Corrections pursuant to this section shall be subject to the  
3 intermediate sanction process as established in subsection B of  
4 Section 991b of this title.

5 SECTION 2. AMENDATORY 22 O.S. 2001, Section 18, as last  
6 amended by Section 1, Chapter 406, O.S.L. 2004 (22 O.S. Supp. 2006,  
7 Section 18), is amended to read as follows:

8 Section 18. Persons authorized to file a motion for  
9 expungement, as provided herein, must be within one of the following  
10 categories:

11 1. The person has been acquitted;

12 2. The conviction was reversed with instructions to dismiss by  
13 an appellate court of competent jurisdiction, or an appellate court  
14 of competent jurisdiction reversed the conviction and the district  
15 attorney subsequently dismissed the charge;

16 3. The factual innocence of the person was established by the  
17 use of deoxyribonucleic acid (DNA) evidence subsequent to  
18 conviction;

19 4. The person was arrested and no charges of any type,  
20 including charges for an offense different than that for which the  
21 person was originally arrested are filed or charges are dismissed  
22 within one (1) year of the arrest, or all charges are dismissed on  
23 the merits, or all charges are dismissed with prejudice and no

1 judgment is entered as provided for a completion of a deferred  
2 judgment under Section 991c of this title;

3 5. The statute of limitations on the offense had expired and no  
4 charges were filed;

5 6. The person was under eighteen (18) years of age at the time  
6 the offense was committed and the person has received a full pardon  
7 for the offense;

8 7. The offense was a misdemeanor, the person has not been  
9 convicted of any other misdemeanor or felony, no felony or  
10 misdemeanor charges are pending against the person, and at least ten  
11 (10) years have passed since the judgment was entered;

12 8. The offense was a nonviolent felony, as defined in Section  
13 571 of Title 57 of the Oklahoma Statutes, the person has received a  
14 full pardon for the offense, the person has not been convicted of  
15 any other misdemeanor or felony, no felony or misdemeanor charges  
16 are pending against the person, and at least ten (10) years have  
17 passed since the conviction; or

18 9. The person has been charged or arrested or is the subject of  
19 an arrest warrant for a crime that was committed by another person  
20 who has appropriated or used the person's name or other  
21 identification without the person's consent or authorization.

22 For purposes of this act, "expungement" shall mean the sealing  
23 of criminal records. Records expunged pursuant to paragraph 9 of

1 this section shall be sealed to the public but not to law  
2 enforcement agencies for law enforcement purposes.

3 SECTION 3. AMENDATORY 57 O.S. 2001, Section 512, is  
4 amended to read as follows:

5 Section 512. A. Any inmate in a state penal institution who  
6 has been granted a parole shall be released from the institution  
7 upon the following conditions:

8 1. ~~That he~~ The person shall comply with specified requirements  
9 of the Division of Community Services of the Department of  
10 Corrections under the active supervision of a Probation and Parole  
11 Officer. Such active supervision shall be for a period not to  
12 exceed three (3) years, except as provided in paragraph 2 of this  
13 section; and

14 2. ~~That he~~ The person shall be actively supervised by a  
15 Probation and Parole Officer for an extended period not to exceed  
16 the expiration of the maximum term or terms for which ~~he~~ the person  
17 was sentenced if convicted of a sex offense or upon the  
18 determination by the Division of Community Services that the best  
19 interests of the public and the parolee will be served by such an  
20 extended period of supervision.

21 Provided, for the purposes of this section, the term "sex  
22 offense" shall not include a violation of paragraph 1 of subsection  
23 A of Section 1021 of Title 21 of the Oklahoma Statutes.

1        B. The Probation and Parole Officer, upon sufficient  
2 information ~~sufficient~~ to give ~~him~~ reasonable grounds to believe  
3 that the parolee has violated the terms ~~of~~ and conditions of his or  
4 her parole, shall notify the Deputy Director of the Division of  
5 Community Services in accordance with Section 516 of Title 57 of the  
6 Oklahoma Statutes.

7        C. On and after the effective date of this act, every parolee  
8 shall be given a valid state identification card to have in the  
9 person's possession upon parole release if such identification was  
10 obtained or maintained as provided in Section 5 of this act.

11        SECTION 4.        AMENDATORY        57 O.S. 2001, Section 513, is  
12 amended to read as follows:

13        Section 513. A. When any prisoner ~~shall be~~ is discharged from  
14 the institution, the Warden or superintendent shall furnish ~~him with~~  
15 the person proper and necessary clothing, a state identification  
16 card if such was obtained or maintained by the Department of  
17 Corrections according to Section 5 of this act, and a railroad or  
18 bus ticket to ~~his~~ the person's home community within the State of  
19 Oklahoma, if it is not in the county in which the institution is  
20 located; and if ~~his~~ the person's home community is outside the State  
21 of Oklahoma, the warden or superintendent may furnish the necessary  
22 tickets to ~~his~~ the person's home community ~~of,~~ the county in which  
23 the sentence was imposed, or the community or county in which the

1 person intends to reside within this state; and if he the person  
2 does not have Fifty Dollars (\$50.00) to his or her credit, the  
3 Warden or superintendent may furnish such sum as will afford ~~him~~  
4 such person Fifty Dollars (\$50.00).

5 B. Funds necessary to provide ~~said~~ clothing, transportation and  
6 Fifty Dollars (\$50.00) shall be drawn from a petty cash fund to be  
7 established at each institution of the ~~Oklahoma~~ Department of  
8 Corrections. ~~Said~~ The Petty Cash Fund shall be governed by the  
9 rules ~~and regulations~~ established by the ~~Oklahoma State Budget~~  
10 Office of State Finance.

11 SECTION 5. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 512.1 of Title 57, unless there  
13 is created a duplication in numbering, reads as follows:

14 A. Except as otherwise provided in this section, every inmate  
15 received into the Department of Corrections for a term of  
16 incarceration who has a valid state identification card shall be  
17 required to maintain such identification card at the inmate's  
18 expense. The Department of Corrections shall implement a process to  
19 identify and maintain state identification cards during terms of  
20 incarceration so that when an inmate is paroled or released from  
21 incarceration such person has a valid state identification card in  
22 the person's possession. The cost of obtaining, maintaining and  
23 renewing any state identification card shall be deemed an inmate

1 expense and a cost of incarceration and may be deducted from any  
2 funds accruing to such inmate's trust account or shall be otherwise  
3 payable by the inmate as established by Department policy.

4 B. Except as otherwise provided in this section, any inmate  
5 received into the custody of the Department for a term of  
6 incarceration who is without a valid state identification card shall  
7 be provided services to acquire an Oklahoma state identification  
8 card prior to parole or release from incarceration. The Department  
9 may deem invalid out-of-state identification cards, but nothing in  
10 this subsection shall be construed to prohibit the Department from  
11 allowing any out-of-state inmate to maintain a valid state  
12 identification card from such inmate's home state while incarcerated  
13 in this state; provided, all costs of maintaining such  
14 identification card are paid by the inmate, and the inmate is sent  
15 to reside in such state upon parole or release from incarceration in  
16 this state.

17 C. On and after the effective date of this act, no inmate shall  
18 be paroled or released from incarceration without having a valid  
19 state identification card in their possession.

20 D. Any valid state identification card obtained by an inmate  
21 prior to reception into the Department of Corrections or any state  
22 identification card obtained while incarcerated in this state shall  
23 be appropriately controlled by the Department or another state

1 agency until the inmate is paroled or released from custody. The  
2 Department of Corrections and the Department of Public Safety shall  
3 develop a cooperative policy for holding, changing addresses and  
4 processing an inmate's state identification card during a term of  
5 incarceration and in preparation for parole or release from custody.  
6 Whenever the address on any inmate's identification card has been  
7 changed to a state agency for holding purposes during a term of  
8 incarceration, such inmate shall be required to process a new  
9 address change prior to parole or release from incarceration; and  
10 from the date of this address change, the Department and all state  
11 agencies shall be relieved from all responsibilities required  
12 pursuant to this section.

13 E. The Department of Corrections or any state agency to  
14 maintain, renew or reinstate any state identification card for any  
15 inmate sentenced to incarceration for any term more than twenty (20)  
16 years, sentenced to life or life without parole, or for any inmate  
17 sentenced to death.

18 F. Nothing in this section shall be construed to authorize the  
19 maintenance, reinstatement or renewal of any state identification  
20 card obtained contrary to law, or the application for a state  
21 identification card in any manner contrary to law.

22 G. The Department of Corrections and the Department of Public  
23 Safety shall not charge any fee or cost in addition to the actual

1 state identification fee established for other citizens of this  
2 state.

3 SECTION 6. AMENDATORY Section 3, Chapter 346, O.S.L.  
4 2003 (57 O.S. Supp. 2006, Section 614), is amended to read as  
5 follows:

6 Section 614. A. The Legislature finds and declares that faith-  
7 based programs offered in state and private correctional  
8 institutions and facilities have the potential to facilitate inmate  
9 institutional adjustment, to help inmates assume personal  
10 responsibility, and to reduce recidivism. It is the intent of the  
11 Legislature that the Department of Corrections and private vendors  
12 operating private correctional facilities work towards ensuring the  
13 availability and development of such programs at the correctional  
14 institutions and facilities of this state and shall continuously:

15 1. Measure recidivism rates for all inmates participating in  
16 faith-based or religious programs at the correctional institution or  
17 facility;

18 2. Work with volunteers ministering to inmates from various  
19 faith-based institutions in this state to improve the quality of  
20 faith-based programs at the correctional institution or facility;

21 3. Continue to develop community linkages with churches,  
22 synagogues, mosques, and other faith-based institutions to assist in  
23 the release of participants into the community; and

1       4. Monitor faith-based programs operating in the correctional  
2 institution or facility.

3       B. Beginning July 1, 2007, the Department of Corrections shall  
4 select and implement one or more pilot faith-based programs in the  
5 correctional institutions operated by the Department. At least one  
6 shall be for female inmates and at least one shall be for male  
7 inmates. The Department shall promulgate rules that accommodate the  
8 operational needs of the faith-based program, including, but not  
9 limited to, access to inmates by volunteers and program personnel  
10 and enhanced opportunities for inmates to participate in a pro-  
11 social environment where values and responsibilities are  
12 appropriately rewarded and where there exists a recognizable change  
13 from current prison culture and institutionalization without actual  
14 release of any inmate or compromise to the safety or security of any  
15 person or property. The rules shall also provide that no  
16 organization or entity receiving funds under this section shall  
17 discriminate in hiring or provision of services on the account of  
18 religion, national origin, age, race or gender. Every person  
19 participating in faith-based programs in correctional institutions  
20 shall be required to complete the Department's volunteer training  
21 program in addition to being trained to develop the faith-based  
22 program.

23       SECTION 7. This act shall become effective July 1, 2007.

1           SECTION 8. It being immediately necessary for the preservation  
2 of the public peace, health and safety, an emergency is hereby  
3 declared to exist, by reason whereof this act shall take effect and  
4 be in full force from and after its passage and approval.

5 COMMITTEE REPORT BY: COMMITTEE ON CRIMINAL JURISPRUDENCE, dated  
6 2-21-07 - DO PASS, As Amended and Coauthored.