

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 3071

By: Morrissette

4
5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2001, Section 991c, as last amended by Section
9 2, Chapter 374, O.S.L. 2005 (22 O.S. Supp. 2009,
10 Section 991c), which relates to deferred sentencing;
11 providing for immediate expungement under certain
12 circumstances; and providing an effective date.

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

14 SECTION 1. AMENDATORY 22 O.S. 2001, Section 991c, as
15 last amended by Section 2, Chapter 374, O.S.L. 2005 (22 O.S. Supp.
16 2009, Section 991c), is amended to read as follows:

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

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
24

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
24 Health and Substance Abuse Services shall establish a fee schedule,

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

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

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

1 if in the opinion of the court the defendant has the ability to pay
2 such fee.

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

13 1. All references to the ~~defendant's~~ name of the defendant
14 shall be deleted from 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
23 court clerk for the purpose of updating the ~~defendant's~~ criminal
24

1 history record of the defendant with the Oklahoma State Bureau of
2 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.

23 G. The deferred judgment procedure described in this section
24 shall not apply to defendants found guilty or who plead guilty or

1 nolo contendere to a sex offense required by law to register
2 pursuant to the Sex Offenders Registration Act.

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

7 SECTION 2. This act shall become effective November 1, 2010.

8

9 52-2-9079 GRS 01/08/10

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24