

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1878

By: Morrissette

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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 113, O.S.L. 2010 (22 O.S. Supp. 2010,
10 Section 991c), which relates to deferred sentences;
11 providing for immediate expungement of records under
12 certain circumstances; and providing an effective
13 date.

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

15 SECTION 1. AMENDATORY 22 O.S. 2001, Section 991c, as
16 last amended by Section 2, Chapter 113, O.S.L. 2010 (22 O.S. Supp.
17 2010, Section 991c), is amended to read as follows:

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

- 1 1. Pay court costs;
- 2 2. Pay an assessment in lieu of any fine authorized by law for
3 the offense;
- 4 3. Pay any other assessment or cost authorized by law;
- 5 4. Engage in a term of community service without compensation,
6 according to a schedule consistent with the employment and family
7 responsibilities of the defendant;
- 8 5. County jail confinement for a period not to exceed ninety
9 (90) days or the maximum amount of jail time provided for the
10 offense, if it is less than ninety (90) days;
- 11 6. Pay an amount as reimbursement for reasonable attorney fees,
12 to be paid into the court fund, if a court-appointed attorney has
13 been provided to defendant;
- 14 7. Be supervised in the community for a period not to exceed
15 two (2) years. As a condition of any supervision, the defendant
16 shall be required to pay a supervision fee of Forty Dollars (\$40.00)
17 per month. The supervision fee shall be waived in whole or part by
18 the supervisory agency when the accused is indigent. No person
19 shall be denied supervision based solely on the inability of the
20 person to pay a fee;
- 21 8. Pay into the court fund a monthly amount not exceeding Forty
22 Dollars (\$40.00) per month during any period during which the
23 proceedings are deferred when the defendant is not to be supervised
24 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
24 Health and Substance Abuse Services shall establish a fee schedule,

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

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

- 16 1. An alcohol and drug substance abuse course, pursuant to
17 Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes; and
- 18 2. A victims impact panel program, if such a program is offered
19 in the county where the judgment is rendered. The defendant shall
20 be required to pay a fee, not less than Five Dollars (\$5.00) nor
21 more than Fifteen Dollars (\$15.00) as set by the governing authority
22 of the program and approved by the court, to the victims impact
23 panel program to offset the cost of participation by the defendant,
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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~~ the state filing a motion dismissing the criminal case, the
7 defendant shall be discharged without a court judgment of guilt, and
8 the 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 record of the defendant shall be as
12 follows:

13 1. All references to the name of the defendant shall be deleted
14 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 criminal history record
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1 of the defendant with the Oklahoma State Bureau of Investigation;
2 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, 2011.

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