

1 **SENATE FLOOR VERSION**

2 February 19, 2013

3 SENATE BILL NO. 984

By: Sykes of the Senate

4 and

5 Biggs of the House

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7
8 An Act relating to deferred prosecution agreements;
9 amending 22 O.S. 2011, Sections 305.1 and 305.3,
10 which relate to guidelines and termination of
11 deferred prosecution agreement; prohibiting
12 agreements for persons accused of certain offenses;
13 modifying certain burden of proof; providing for
14 certain remedy; removing certain notice and hearing
15 requirements; updating language; and providing an
16 effective date.

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

18 SECTION 1. AMENDATORY 22 O.S. 2011, Section 305.1, is
19 amended to read as follows:

20 Section 305.1. A. Before the filing of an information against
21 a person accused of committing a crime, the State of Oklahoma,
22 through its district attorney, may agree with an accused to defer
23 the filing of a criminal information for a period not to exceed
24 three (3) years.

The State of Oklahoma may include any person in a deferred
prosecution program if it is in the best interests of the accused

1 and not contrary to the public interest. Each district attorney
2 shall adopt and promulgate guidelines which shall indicate what
3 factors shall be considered in including an accused in the deferred
4 prosecution program. The guidelines shall insure that the State of
5 Oklahoma considers in each case at least the following factors:

6 1. Whether the State of Oklahoma has sufficient evidence to
7 achieve conviction;

8 2. The nature of the offense with priority given to first
9 offenders and nonviolent crimes;

10 3. Any special characteristics of the accused;

11 4. Whether the accused will cooperate and benefit from a
12 deferred prosecution program;

13 5. Whether available programs are appropriate to the accused
14 person's needs;

15 6. Whether the services for the accused are more readily
16 available from the community or from the corrections system;

17 7. Whether the accused constitutes a substantial danger to
18 others;

19 8. The impact of the deferred prosecution on the community;

20 9. The recommendations of the law enforcement agency involved
21 in the case;

22 10. The opinions of the victim; and

23 11. Any mitigating or aggravating circumstances.
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1 B. In no event shall a deferred prosecution be offered to a
2 person accused of an offense that would require service of eighty-
3 five percent (85%) of the sentence or an underlying offense which
4 would result in a requirement to register as a sex offender.

5 SECTION 2. AMENDATORY 22 O.S. 2011, Section 305.3, is
6 amended to read as follows:

7 Section 305.3. A. Both the State of Oklahoma and the accused
8 may mutually terminate the deferred prosecution at any time, and the
9 case shall proceed as if there had been no agreement. If the State
10 of Oklahoma makes the termination decision unilaterally, it shall
11 only do so ~~in light of all the relevant circumstances of the case~~
12 upon good cause. Absent good cause, the defendant may, as a matter
13 of contract, pursue a civil remedy. Arrest of the accused for a
14 subsequent offense shall not automatically terminate the agreement.
15 ~~If the State of Oklahoma should decide to terminate the agreement,~~
16 ~~it shall:~~

17 1. ~~Send a written notice of termination to the accused and the~~
18 ~~attorney for the accused, if any, explaining the reasons for the~~
19 ~~termination;~~

20 2. ~~Disclose to the accused or the attorney for the accused the~~
21 ~~evidence supporting the decision to terminate; and~~

22 3. ~~Afford the accused the opportunity to be heard and present~~
23 ~~evidence, and cross-examine witnesses before a judge of the district~~
24 ~~court. The accused shall have ten (10) days from the date of~~

1 ~~mailing of the notice to file a written request with the court clerk~~
2 ~~for the county in which a charge is pending for the hearing, after~~
3 ~~which the right to a hearing shall be waived. The burden shall be~~
4 ~~upon the State of Oklahoma to prove that the accused did not fulfill~~
5 ~~the conditions of the agreement, and that an information should be~~
6 ~~filed.~~

7 B. On and after ~~the effective date of this act~~ July 1, 2000, if
8 an agreement is terminated by the State of Oklahoma for failure of
9 the person to comply with the terms of the deferred prosecution
10 agreement, the termination document and supporting documentation
11 shall be open to the public.

12 C. If an agreement is terminated by the State of Oklahoma and
13 the accused is subsequently tried before a jury, the court shall
14 instruct the jury not to consider any delay in prosecution while the
15 accused was participating in the deferred prosecution program.

16 SECTION 3. This act shall become effective November 1, 2013.

17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
18 February 19, 2013 - DO PASS

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