

1 ENGROSSED HOUSE
2 BILL NO. 1269

By: Dunnington, Echols and West
(Josh) of the House

3 and

4 Bice of the Senate
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8 [criminal procedure - establishing sentence
9 modification procedures and guidelines - effective
10 date]
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13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 22 O.S. 2011, Section 982a, as
15 last amended by Section 1, Chapter 128, O.S.L. 2018 (22 O.S. Supp.
16 2018, Section 982a), is amended to read as follows:

17 Section 982a. A. 1. Any time within sixty (60) months after
18 the initial sentence is imposed or within sixty (60) months after
19 probation has been revoked, the court imposing sentence or
20 revocation of probation may modify such sentence or revocation by
21 directing that another sentence be imposed, if the court is
22 satisfied that the best interests of the public will not be
23 jeopardized; provided, however, the court shall not impose a
24 deferred sentence. Any application for sentence modification that

1 is filed and ruled upon beyond twelve (12) months of the initial
2 sentence being imposed must be approved by the district attorney who
3 shall provide written notice to any victims in the case which is
4 being considered for modification.

5 2. The court imposing sentence may modify the sentence of any
6 offender who was originally sentenced for a drug charge and ordered
7 to complete the Drug Offender Work Camp at the Bill Johnson
8 Correctional Facility and direct that another sentence be imposed,
9 if the court is satisfied that the best interests of the public will
10 not be jeopardized; provided, however, the court shall not impose a
11 deferred sentence. An application for sentence modification
12 pursuant to this paragraph may be filed and ruled upon beyond the
13 initial sixty-month time period provided for in paragraph 1 of this
14 subsection.

15 3. This section shall not apply to convicted felons who have
16 been in confinement in any state or federal prison system for any
17 previous felony conviction during the ten-year period preceding the
18 date that the sentence this section applies to was imposed.
19 Further, without the consent of the district attorney, this section
20 shall not apply to sentences imposed pursuant to a plea agreement or
21 jury verdict.

22 B. The court imposing the sentence may modify the sentence of
23 any offender sentenced to life without parole for an offense other
24 than a violent crime, as enumerated in Section 571 of Title 57 of

1 the Oklahoma Statutes, who has served at least ten (10) years of the
2 sentence in the custody of the Department of Corrections upon a
3 finding that the best interests of the public will not be
4 jeopardized. Provided~~r,~~, however, prior to granting a sentence
5 modification under the provisions of this subsection, the court
6 shall provide notice of the hearing to determine sentence
7 modification to the victim or representative of the victim and shall
8 allow the victim or representative of the victim the opportunity to
9 provide testimony at the hearing. The court shall consider the
10 testimony of the victim or representative of the victim when
11 rendering a decision to modify the sentence of an offender.

12 C. For purposes of judicial review, upon court order or written
13 request from the sentencing judge, the Department of Corrections
14 shall provide the court imposing sentence or revocation of probation
15 with a report to include a summary of the assessed needs of the
16 offender, any progress made by the offender in addressing his or her
17 assessed needs, and any other information the Department can supply
18 on the offender. The court shall consider such reports when
19 modifying the sentence or revocation of probation. The court shall
20 allow the Department of Corrections at least twenty (20) days after
21 receipt of a request or order from the court to prepare the required
22 reports.

23 D. If the court considers modification of the sentence or
24 revocation of probation, a hearing shall be made in open court after

1 receipt of the reports required in subsection C of this section.
2 The clerk of the court imposing sentence or revocation of probation
3 shall give notice of the judicial review hearing to the Department
4 of Corrections, the offender, the legal counsel of the offender, and
5 the district attorney of the county in which the offender was
6 convicted upon receipt of the reports. Such notice shall be mailed
7 at least twenty-one (21) days prior to the hearing date and shall
8 include a copy of the report and any other written information to be
9 considered at the judicial review hearing.

10 E. If an appeal is taken from the original sentence or from a
11 revocation of probation which results in a modification of the
12 sentence or modification to the revocation of probation of the
13 offender, such sentence may be further modified in the manner
14 described in paragraph 1 of subsection A of this section within
15 sixty (60) months after the receipt by the clerk of the district
16 court of the mandate from the Supreme Court or the Court of Criminal
17 Appeals.

18 F. 1. Notwithstanding the provisions of subsections A, C or D
19 of this section, each court shall set aside the judgment and
20 sentence and resentence the following persons convicted of Section
21 2-402 of Title 63 of the Oklahoma Statutes, whether by trial or
22 plea, upon a finding that the person, if he or she committed the
23 same crime on or after July 1, 2017, would have been guilty of a
24 misdemeanor:

- 1 a. persons enumerated by the Department of Corrections
2 pursuant to the provisions of Section 2 of this act
3 who are currently serving a sentence of imprisonment,
4 b. persons considered for a revocation of probation
5 pursuant to the provisions of subsection G of Section
6 991b of this title, and
7 c. persons considered for an acceleration of a deferred
8 sentence pursuant to the provisions of subsection K of
9 Section 991c of this title.

10 2. A hearing shall not be conducted to modify a sentence
11 pursuant to this subsection unless requested by the person.

12 3. If the sentence of the person includes multiple felony
13 convictions, one or more of which was reduced to a misdemeanor
14 pursuant to this subsection, the court shall reduce the sentence to
15 the length the sentence would have been if the violation of Section
16 2-402 of Title 63 of the Oklahoma Statutes was committed on or after
17 July 1, 2017.

18 4. a. The court shall resentence each person set forth in
19 subparagraph a of paragraph 1 of this subsection
20 within three (3) months of receipt of the report
21 prepared by the Department of Corrections pursuant to
22 Section 2 of this act.

1 b. The court shall resentence each person set forth in
2 subparagraphs b and c of paragraph 1 of this
3 subsection within six (6) months of referral.

4 5. A person whose sentence is modified pursuant to this
5 subsection shall be given credit for time served. Under no
6 circumstances may resentencing under this subsection result in the
7 imposition of a term longer than the original sentence.

8 6. A sentence pursuant to the provisions of Section 2-402 of
9 Title 63 of the Oklahoma Statutes that is modified pursuant to this
10 subsection shall be considered a misdemeanor for all purposes.

11 7. Upon a sentence modification pursuant to this subsection,
12 the court shall order all applicable court and law enforcement
13 records relating to the felony conviction of the person pursuant to
14 the provisions of Section 2-402 of Title 63 of the Oklahoma Statutes
15 to be modified to reflect the new sentence.

16 8. A final judgment entered under this subsection may be
17 appealed to the Court of Criminal Appeals within thirty (30) days
18 from the entry of the judgment.

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 983c of Title 22, unless there
21 is created a duplication in numbering, reads as follows:

22 A. On or before August 1, 2019, and every three (3) months
23 thereafter, the Director of the Department of Corrections shall
24 compile and distribute a report to each presiding judge for each

1 district court from which individuals have been sentenced and are
2 currently serving a sentence of imprisonment, including those
3 individuals whose sentences have been revoked and accelerated, for a
4 conviction pursuant to Section 2-402 of Title 63 of the Oklahoma
5 Statutes for an offense committed prior to July 1, 2017, and who
6 have more than three (3) months or more remaining until their
7 expected release dates.

8 B. The report shall include:

9 1. Those individuals currently serving a sentence of
10 imprisonment for multiple offenses, served concurrently or
11 consecutively, one or more of which is for a conviction pursuant to
12 Section 2-402 of Title 63 of the Oklahoma Statutes;

13 2. The county from which the person was sentenced;

14 3. The court-imposed sentence, including sentences for other
15 offenses served concurrently or consecutively; and

16 4. The expected remaining stay in prison.

17 C. Copies of the reports shall be made available to the public
18 upon request.

19 D. The Department shall notify each person serving a sentence
20 of imprisonment for a conviction pursuant to Section 2-402 of Title
21 63 of the Oklahoma Statutes that committed his or her offense prior
22 to July 1, 2017, and who has three (3) months or less remaining
23 until his or her expected release date, that the person has the
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1 right to apply for sentence modification pursuant to Section 1080 of
2 Title 22 of the Oklahoma Statutes.

3 E. The provisions of this section shall terminate on August 1,
4 2024.

5 SECTION 3. AMENDATORY 22 O.S. 2011, Section 991b, as
6 last amended by Section 11, Chapter 128, O.S.L. 2018 (22 O.S. Supp.
7 2018, Section 991b), is amended to read as follows:

8 Section 991b. A. Whenever a sentence has been suspended by the
9 court after conviction of a person for any crime, the suspended
10 sentence of the person may not be revoked, in whole or part, for any
11 cause unless a petition setting forth the grounds for such
12 revocation is filed by the district attorney with the clerk of the
13 sentencing court and competent evidence justifying the revocation of
14 the suspended sentence is presented to the court at a hearing to be
15 held for that purpose within twenty (20) days after the entry of the
16 plea of not guilty to the petition, unless waived by both the state
17 and the defendant. The State of Oklahoma may dismiss the petition
18 without prejudice one time upon good cause shown to the court,
19 provided that any successor petition must be filed within forty-five
20 (45) days of the date of the dismissal of the petition.

21 B. Whenever a sentence has been suspended by the court after
22 conviction of a person for any crime, the suspended sentence of the
23 person may not be revoked in whole for a technical violation unless
24 a petition setting forth the grounds for such revocation is filed by

1 the district attorney with the clerk of the sentencing court and
2 competent evidence justifying the revocation of the suspended
3 sentence is presented to the court at a hearing to be held for that
4 purpose within twenty (20) days after the entry of the plea of not
5 guilty to the petition, unless waived by both the state and the
6 defendant. The State of Oklahoma may dismiss the petition without
7 prejudice one time upon good cause shown to the court, 7; provided, 1
8 that any successor petition must be filed within forty-five (45)
9 days of the date of the dismissal of the petition. Any revocation
10 of a suspended sentence based on a technical violation shall not
11 exceed six (6) months for a first revocation and five (5) years for
12 a second or subsequent revocation.

13 C. "Technical violation" as used in this section means a
14 violation of the court-imposed rules and conditions of probation,
15 other than:

- 16 1. Committing or being arrested for a new crime;
- 17 2. Attempting to falsify a drug screen, or three ~~(3)~~ or more
18 failed drug or alcohol screens within a ~~three (3) month~~ three-month
19 period;
- 20 3. Failing to pay restitution;
- 21 4. Tampering with an electronic monitoring device;
- 22 5. Failing to initially report or missing assigned reporting
23 requirements for an excess of sixty (60) days;

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1 6. Unlawfully contacting a victim, ~~co-defendant~~ codefendant or
2 criminal associates;

3 7. Five ~~(5)~~ or more separate and distinct technical violations
4 within a ninety-day period; or

5 8. Any violation of the Specialized Sex Offender Rules.

6 D. 1. The Department of Corrections shall develop a matrix of
7 technical violations and sanctions to address violations committed
8 by persons who are being supervised by the Department. The
9 Department shall be authorized to use a violation response and
10 intermediate sanction process based on the sanction matrix to apply
11 to any technical violations of probationers. Within four (4)
12 working days of the discovery of the violation, the probation
13 officer shall initiate the violation response and intermediate
14 sanction process. The sentencing judge may authorize any
15 recommended sanctions, which may include, but are not limited to:
16 short-term jail or lockup, day treatment, program attendance,
17 community service, outpatient or inpatient treatment, monetary
18 fines, curfews, ignition interlock devices on vehicles, or a one-
19 time referral to a term of confinement of six (6) months in an
20 intermediate revocation facility operated by the Department of
21 Corrections; provided, upon approval of the district attorney, a
22 person may be sanctioned to serve additional terms of confinement in
23 an intermediate revocation facility. The probation officer shall
24 complete a sanction form, which shall specify the technical

1 violation, sanction, and the action plan to correct the noncompliant
2 behavior resulting in the technical violation. The probation
3 officer shall refer to the sanctioning matrix to determine the
4 supervision, treatment, and sanctions appropriate to address the
5 noncompliant behavior. The probation officer shall refer the
6 violation information and recommended response with a sanction plan
7 to the Department of Corrections to be heard by a hearing officer.
8 The Department of Corrections shall develop a sanction matrix,
9 forms, policies and procedures necessary to implement this
10 provision. The Department of Corrections shall establish procedures
11 to hear responses to technical violations and review sanction plans
12 including the following:

- 13 a. hearing officers shall report through a chain of
14 command separate from that of the supervising
15 probation officers,
- 16 b. the Department shall provide the offender written
17 notice of the violation, the evidence relied upon, and
18 the reason the sanction was imposed,
- 19 c. the hearing shall be held unless the offender waives
20 the right to the hearing,
- 21 d. hearings shall be electronically recorded, and
- 22 e. the Department shall provide to judges and district
23 attorneys a record of all violations and actions taken
24 pursuant to this subsection.

1 2. The hearing officer shall determine based on a preponderance
2 of the evidence whether a technical violation occurred. Upon a
3 finding that a technical violation occurred, the hearing officer may
4 order the offender to participate in the recommended sanction plan
5 or may modify the plan. Offenders who accept the sanction plan
6 shall sign a violation response sanction form, and the hearing
7 officer shall then impose the sanction. Failure of the offender to
8 comply with the imposed sanction plan shall constitute a violation
9 of the rules and conditions of supervision that may result in a
10 revocation proceeding. If an offender does not voluntarily accept
11 the recommended sanction plan, the Department shall either impose
12 the sanction and allow the offender to appeal to the district court,
13 or request a revocation proceeding as provided by law. Every
14 administrative hearing and sanction imposed by the Department shall
15 be appealable to the district court.

16 3. Absent a finding of willful nonpayment by the offender, the
17 failure of an offender to pay fines and costs may not serve as a
18 basis for revocation, excluding restitution.

19 E. 1. Where one of the grounds for revocation is the failure
20 of the defendant to make restitution as ordered, the Department of
21 Corrections shall forward to the district attorney all information
22 pertaining to the failure of the defendant to make timely
23 restitution as ordered by the court, and the district attorney shall
24 file a petition setting forth the grounds for revocation.

1 2. The defendant ordered to make restitution can petition the
2 court at any time for remission or a change in the terms of the
3 order of restitution if the defendant undergoes a change of
4 condition which materially affects the ability of the defendant to
5 comply with the order of the court.

6 3. At the hearing, if one of the grounds for the petition for
7 revocation is the failure of the defendant to make timely
8 restitution as ordered by the court, the court will hear evidence
9 and if it appears to the satisfaction of the court from such
10 evidence that the terms of the order of restitution create a
11 manifest hardship on the defendant or the immediate family of the
12 defendant, the court may cancel all or any part of the amount still
13 due, or modify the terms or method of payment. Provided, if the
14 court determines that a reduction in the restitution still due is
15 warranted, the court shall equally apply the same percentage
16 reduction to any court-ordered monetary obligation owed by the
17 defendant including, but not limited to, fines, court costs and
18 costs of incarceration.

19 F. The court may revoke a portion of the sentence and leave the
20 remaining part not revoked, but suspended for the remainder of the
21 term of the sentence, and under the provisions applying to it. The
22 person whose suspended sentence is being considered for revocation
23 at the hearing shall have the right to be represented by counsel, to
24 present competent evidence in his or her own behalf and to be

1 confronted by the witnesses against the defendant. Any order of the
2 court revoking the suspended sentence, in whole or in part, shall be
3 subject to review on appeal, as in other appeals of criminal cases.
4 Provided, however, that if the crime for which the suspended
5 sentence is given was a felony, the defendant may be allowed bail
6 pending appeal. If the reason for revocation be that the defendant
7 committed a felony, the defendant shall not be allowed bail pending
8 appeal.

9 G. Notwithstanding the provisions of subsections A and B of
10 this section, a person who is being considered for revocation of a
11 suspended sentence pursuant to Section 2-402 of Title 63 of the
12 Oklahoma Statutes and who was sentenced prior to July 1, 2017,
13 shall:

14 1. Have further proceedings under this section deferred;

15 2. Have his or her underlying judgment and sentence set aside;

16 and

17 3. Be resentenced pursuant to the provisions of subsection F of
18 Section 982a of this title.

19 Resentencing pursuant to subsection F of Section 982a of this title
20 shall not restrict the sentencing judge from considering an
21 application to revoke the suspended sentence.

22 SECTION 4. AMENDATORY 22 O.S. 2011, Section 991c, as
23 last amended by Section 12, Chapter 128, O.S.L. 2018 (22 O.S. Supp.
24 2018, Section 991c), is amended to read as follows:

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

10 1. Pay court costs;

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

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

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

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

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

23 7. Be supervised in the community for a period not to exceed
24 eighteen (18) months, unless a petition alleging violation of any

1 condition of deferred judgment is filed during the period of
2 supervision. As a condition of any supervision, the defendant shall
3 be required to pay a supervision fee of Forty Dollars (\$40.00) per
4 month. The supervision fee shall be waived in whole or part by the
5 supervisory agency when the accused is indigent. No person shall be
6 denied supervision based solely on the inability of the person to
7 pay a fee;

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

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

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

19 11. Any combination of the above provisions.

20 However, unless under the supervision of the district attorney,
21 the offender shall be required to pay Forty Dollars (\$40.00) per
22 month to the district attorney during the first two (2) years of
23 probation to compensate the district attorney for the costs incurred
24 during the prosecution of the offender and for the additional work

1 of verifying the compliance of the offender with the rules and
2 conditions of his or her probation. The district attorney may waive
3 any part of this requirement in the best interests of justice. The
4 court shall not waive, suspend, defer or dismiss the costs of
5 prosecution in its entirety. However, if the court determines that
6 a reduction in the fine, costs and costs of prosecution is
7 warranted, the court shall equally apply the same percentage
8 reduction to the fine, costs and costs of prosecution owed by the
9 offender.

10 B. When the court has ordered restitution as a condition of
11 supervision as provided for in subsection A of this section and that
12 condition has not been satisfied, the court may, at any time prior
13 to the termination or expiration of the supervision period, order an
14 extension of supervision for a period not to exceed three (3) years.

15 C. In addition to any conditions of supervision provided for in
16 subsection A of this section, the court shall, in the case of a
17 person before the court for the offense of operating or being in
18 control of a motor vehicle while the person was under the influence
19 of alcohol, other intoxicating substance, or a combination of
20 alcohol and another intoxicating substance, or who is before the
21 court for the offense of operating a motor vehicle while the ability
22 of the person to operate such vehicle was impaired due to the
23 consumption of alcohol, require the person to participate in an
24 alcohol and drug substance abuse evaluation program offered by a

1 facility or qualified practitioner certified by the Department of
2 Mental Health and Substance Abuse Services for the purpose of
3 evaluating the receptivity to treatment and prognosis of the person.
4 The court shall order the person to reimburse the facility or
5 qualified practitioner for the evaluation. The Department of Mental
6 Health and Substance Abuse Services shall establish a fee schedule,
7 based upon the ability of a person to pay, provided the fee for an
8 evaluation shall not exceed Seventy-five Dollars (\$75.00). The
9 evaluation shall be conducted at a certified facility, the office of
10 a qualified practitioner or at another location as ordered by the
11 court. The facility or qualified practitioner shall, within
12 seventy-two (72) hours from the time the person is assessed, submit
13 a written report to the court for the purpose of assisting the court
14 in its determination of conditions for deferred sentence. No
15 person, agency or facility operating an alcohol and drug substance
16 abuse evaluation program certified by the Department of Mental
17 Health and Substance Abuse Services shall solicit or refer any
18 person evaluated pursuant to this subsection for any treatment
19 program or alcohol and drug substance abuse service in which the
20 person, agency or facility has a vested interest; however, this
21 provision shall not be construed to prohibit the court from ordering
22 participation in or any person from voluntarily utilizing a
23 treatment program or alcohol and drug substance abuse service
24 offered by such person, agency or facility. Any evaluation report

1 submitted to the court pursuant to this subsection shall be handled
2 in a manner which will keep the report confidential from review by
3 the general public. Nothing contained in this subsection shall be
4 construed to prohibit the court from ordering judgment and sentence
5 in the event the defendant fails or refuses to comply with an order
6 of the court to obtain the evaluation required by this subsection.
7 As used in this subsection, "qualified practitioner" means a person
8 with at least a bachelor's degree in substance abuse treatment,
9 mental health or a related health care field and at least two (2)
10 years of experience in providing alcohol abuse treatment, other drug
11 abuse treatment, or both alcohol and other drug abuse treatment who
12 is certified each year by the Department of Mental Health and
13 Substance Abuse Services to provide these assessments. However, any
14 person who does not meet the requirements for a qualified
15 practitioner as defined herein, but who has been previously
16 certified by the Department of Mental Health and Substance Abuse
17 Services to provide alcohol or drug treatment or assessments, shall
18 be considered a qualified practitioner provided all education,
19 experience and certification requirements stated herein are met by
20 September 1, 1995. The court may also require the person to
21 participate in one or both of the following:

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

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1 2. A victims impact panel program, as defined in subsection H
2 of Section 991a of this title, if such a program is offered in the
3 county where the judgment is rendered. The defendant shall be
4 required to pay a fee of not less than Fifteen Dollars (\$15.00) nor
5 more than Sixty Dollars (\$60.00) as set by the governing authority
6 of the program and approved by the court to the victims impact panel
7 program to offset the cost of participation by the defendant, if in
8 the opinion of the court the defendant has the ability to pay such
9 fee.

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

19 1. All references to the name of the defendant shall be deleted
20 from the docket sheet;

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

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

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

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

14 Records expunged pursuant to this subsection shall be sealed to
15 the public but not to law enforcement agencies for law enforcement
16 purposes. Records expunged pursuant to this subsection shall be
17 admissible in any subsequent criminal prosecution to prove the
18 existence of a prior conviction or prior deferred judgment without
19 the necessity of a court order requesting the unsealing of such
20 records.

21 E. The provisions of subsection D of this section shall be
22 retroactive.

23 F. Whenever a judgment has been deferred by the court according
24 to the provisions of this section, deferred judgment may not be

1 accelerated for any technical violation unless a petition setting
2 forth the grounds for such acceleration is filed by the district
3 attorney with the clerk of the sentencing court and competent
4 evidence justifying the acceleration of the judgment is presented to
5 the court at a hearing to be held for that purpose. The hearing
6 shall be held not more than twenty (20) days after the entry of the
7 plea of not guilty to the petition, unless waived by both the state
8 and the defendant. Any acceleration of a deferred sentence based on
9 a technical violation shall not exceed ninety (90) days for a first
10 acceleration or five (5) years for a second or subsequent
11 acceleration.

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

18 H. The deferred judgment procedure described in this section
19 shall apply only to defendants who have not been previously
20 convicted of a felony offense and have not received more than one
21 deferred judgment for a felony offense within the ten (10) years
22 previous to the commission of the pending offense.

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

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

8 J. All defendants who are supervised pursuant to this section
9 shall be subject to the sanction process as established in
10 subsection ~~B~~ D of Section 991b of this title.

11 K. Notwithstanding the provisions of subsections F and G of
12 this section, a person who is being considered for an acceleration
13 of a deferred judgment pursuant to Section 2-402 of Title 63 of the
14 Oklahoma Statutes, and who committed the offense prior to July 1,
15 2017, shall:

16 1. Have further proceedings under this section deferred;

17 2. Have his or her underlying judgment set aside; and

18 3. Be resentenced pursuant to the provisions of subsection F of
19 Section 982a of this title.

20 Resentencing pursuant to subsection F of Section 982a of this title
21 shall not restrict the sentencing judge from considering the
22 application to accelerate the deferred judgment.

23 SECTION 5. AMENDATORY 22 O.S. 2011, Section 1080, is
24 amended to read as follows:

1 Section 1080. Any person who has been convicted of, or
2 sentenced for, a crime and who claims:

3 ~~(a) that~~ 1. That the conviction or the sentence was in
4 violation of the Constitution of the United States or the
5 Constitution or laws of this state;

6 ~~(b) that~~ 2. That the court was without jurisdiction to impose
7 sentence;

8 ~~(c) that~~ 3. That the sentence exceeds the maximum authorized by
9 law;

10 ~~(d) that~~ 4. That there exists evidence of material facts, not
11 previously presented and heard, that requires vacation of the
12 conviction or sentence in the interest of justice;

13 ~~(e) that his~~ 5. That the sentence of the defendant has expired,
14 ~~his~~ the suspended sentence, probation, parole, or conditional
15 release of the defendant was unlawfully revoked, or ~~he~~ the defendant
16 is otherwise unlawfully held in custody or other restraint; ~~or~~

17 ~~(f) that~~ 6. That the conviction or sentence is otherwise
18 subject to collateral attack upon any ground of alleged error
19 heretofore available under any common law, statutory or other writ,
20 motion, petition, proceeding or remedy;

21 7. That the conviction or sentence was for a felony offense for
22 which the same act or acts that resulted in the felony conviction
23 or sentence have subsequently been changed by law to a misdemeanor;
24 or

1 8. That the maximum penalty for the offense of which the
2 defendant was convicted has subsequently been lowered and the
3 defendant was sentenced to a penalty that exceeds the maximum
4 sentence currently authorized by law for the offense,
5 may institute a proceeding under this act in the court in which the
6 judgment and sentence on conviction was imposed to secure the
7 appropriate relief. Excluding a timely appeal, this act encompasses
8 and replaces all common law and statutory methods of challenging a
9 conviction or sentence. Nothing in this section shall be construed
10 to create a civil cause of action related to a change in the law
11 governing the conviction of an applicant.

12 SECTION 6. AMENDATORY 22 O.S. 2011, Section 1083, as
13 amended by Section 1, Chapter 216, O.S.L. 2014 (22 O.S. Supp. 2018,
14 Section 1083), is amended to read as follows:

15 Section 1083. A. Within thirty (30) days after the docketing
16 of the application, or within any further time the court may fix,
17 the state shall respond by answer or by motion which may be
18 supported by affidavits. When an applicant asserts a claim of
19 ineffective assistance of counsel, the state shall have ninety (90)
20 days after the docketing of the application to respond by answer or
21 by motion. In considering the application, the court shall take
22 account of substance, regardless of defects of form. If the
23 application is not accompanied by the record of the proceedings
24 challenged therein, the respondent shall file with its answer the

1 record or portions thereof that are material to the questions raised
2 in the application; or such records may be ordered by the court.
3 The court may also allow depositions and affidavits for good cause
4 shown.

5 B. When a court is satisfied, on the basis of the application,
6 the answer or motion of respondent, and the record, that the
7 applicant is not entitled to post-conviction relief and no purpose
8 would be served by any further proceedings, it may order the
9 application dismissed or grant leave to file an amended application.
10 Disposition on the pleadings and record is not proper if there
11 exists a material issue of fact. The judge assigned to the case
12 should not dispose of it on the basis of information within his
13 personal knowledge not made a part of the record.

14 C. The court may grant a motion by either party for summary
15 disposition of the application when it appears from the response and
16 pleadings that there is no genuine issue of material fact and the
17 moving party is entitled to judgment as a matter of law. An order
18 disposing of an application without a hearing shall state the
19 court's findings and conclusions regarding the issues presented.

20 D. When an application is filed pursuant to paragraph 7 or 8 of
21 Section 1080 of this title, the court shall presume that the
22 applicant is entitled to relief unless the state proves by clear and
23 convincing evidence that the provision of law governing the
24

1 conviction of the applicant has not changed or that the record
2 rebutts the claim by the applicant.

3 SECTION 7. AMENDATORY 22 O.S. 2011, Section 1085, is
4 amended to read as follows:

5 Section 1085. If the court finds in favor of the applicant, it
6 shall vacate and set aside the judgment and sentence and discharge
7 or resentence him, or grant a new trial, or correct or modify the
8 judgment and sentence as may appear appropriate. The court shall
9 enter any supplementary orders as to rearraignment, retrial,
10 custody, bail, discharge, or other matters that may be necessary and
11 proper. If the court determines that an applicant is entitled to
12 have his or her conviction reclassified as a misdemeanor pursuant to
13 paragraph 7 of Section 1080 of this title, the conviction shall be
14 considered a misdemeanor for all purposes.

15 SECTION 8. This act shall become effective November 1, 2019.

16 Passed the House of Representatives the 11th day of March, 2019.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ____ day of _____, 2019.

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23

Presiding Officer of the Senate

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