

1 **SENATE FLOOR VERSION**

2 April 10, 2019

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 1269

6 By: Dunnington, Echols, West  
7 (Josh) and Provenzano of  
8 the House

9 and

10 Bice and Young of the  
11 Senate

12 [ criminal procedure - establishing sentence  
13 modification procedures and guidelines - effective  
14 date ]

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

16 SECTION 1. AMENDATORY 22 O.S. 2011, Section 982a, as  
17 last amended by Section 1, Chapter 128, O.S.L. 2018 (22 O.S. Supp.  
18 2018, Section 982a), is amended to read as follows:

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21 probation has been revoked, the court imposing sentence or  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

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

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

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

23 B. The court imposing the sentence may modify the sentence of  
24 any offender sentenced to life without parole for an offense other

1 than a violent crime, as enumerated in Section 571 of Title 57 of  
2 the Oklahoma Statutes, who has served at least ten (10) years of the  
3 sentence in the custody of the Department of Corrections upon a  
4 finding that the best interests of the public will not be  
5 jeopardized. Provided~~r,~~, however, prior to granting a sentence  
6 modification under the provisions of this subsection, the court  
7 shall provide notice of the hearing to determine sentence  
8 modification to the victim or representative of the victim and shall  
9 allow the victim or representative of the victim the opportunity to  
10 provide testimony at the hearing. The court shall consider the  
11 testimony of the victim or representative of the victim when  
12 rendering a decision to modify the sentence of an offender.

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

24

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

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

20 F. 1. Notwithstanding the provisions of subsections A, C or D  
21 of this section, each court shall set aside the judgment and  
22 sentence and resentence the following persons convicted of Section  
23 2-402 of Title 63 of the Oklahoma Statutes, whether by trial or  
24 plea, upon a finding that the person, if he or she committed the

1 same crime on or after July 1, 2017, would have been guilty of a  
2 misdemeanor:

3 a. persons enumerated by the Department of Corrections  
4 pursuant to the provisions of Section 2 of this act  
5 who are currently serving a sentence of imprisonment,

6 b. persons considered for a revocation of probation  
7 pursuant to the provisions of subsection G of Section  
8 991b of this title, and

9 c. persons considered for an acceleration of a deferred  
10 sentence pursuant to the provisions of subsection K of  
11 Section 991c of this title.

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

14 3. If the sentence of the person includes multiple felony  
15 convictions, one or more of which was reduced to a misdemeanor  
16 pursuant to this subsection, the court shall reduce the sentence to  
17 the length the sentence would have been if the violation of Section  
18 2-402 of Title 63 of the Oklahoma Statutes was committed on or after  
19 July 1, 2017.

20 4. a. The court shall resentence each person set forth in  
21 subparagraph a of paragraph 1 of this subsection  
22 within three (3) months of receipt of the report  
23 prepared by the Department of Corrections pursuant to  
24 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  
24

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<sup>7</sup>; provided<sup>1</sup>,  
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;
- 24

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  
24

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;

23

24

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.

23

24

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 or  
23 sentence have subsequently been changed by law to a misdemeanor; or  
24



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 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
17 April 10, 2019 - DO PASS AS AMENDED  
18  
19  
20  
21  
22  
23  
24