

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 1269

By: Dunnington and Echols

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6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2011, Section 982a, as last amended by Section
9 1, Chapter 128, O.S.L. 2018 (22 O.S. Supp. 2018,
10 Section 982a), which relates to sentence
11 modification; directing courts to set aside judgment
12 and sentences and resentence persons convicted of
13 certain crimes; establishing sentence modification
14 procedures and guidelines; providing for appeals of
15 final judgments within certain time frame; requiring
16 the Director of the Department of Corrections to
17 compile and submit report of certain inmates to
18 presiding judges of district courts; stating contents
19 of report; making copies of report available to the
20 public upon request; stating termination date of
21 report submission requirement; amending 22 O.S. 2011,
22 Section 991b, as last amended by Section 11, Chapter
23 128, O.S.L. 2018 (22 O.S. Supp. 2018, Section 991b),
24 which relates to revocation of suspended sentences;
requiring deferment of revocation proceedings for
persons under suspended sentence for certain
convictions; setting aside judgment and sentences and
requiring persons be resentenced; amending 22 O.S.
2011, Section 991c, as last amended by Section 12,
Chapter 128, O.S.L. 2018 (22 O.S. Supp. 2018, Section
991c), which relates to deferred sentences; requiring
deferment of acceleration proceedings for persons
under deferred judgment; setting aside judgment and
requiring persons be resentenced; amending 22 O.S.
2011, Sections 1080, 1083, as amended by Section 1,
Chapter 216, O.S.L. 2014 and 1085 (22 O.S. Supp.
2018, Section 1083), which relate to the Uniform
Post-Conviction Procedure Act; authorizing persons
convicted of certain crimes to institute post-
conviction proceedings; directing courts to presume
that certain post-conviction relief applicants are

1 entitled to relief; providing an exception;
2 reclassifying certain convictions as misdemeanors
3 upon certain determination by the court; providing
4 for codification; and providing an effective date.
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6 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

7 SECTION 1. AMENDATORY 22 O.S. 2011, Section 982a, as
8 last amended by Section 1, Chapter 128, O.S.L. 2018 (22 O.S. Supp.
9 2018, Section 982a), is amended to read as follows:

10 Section 982a. A. 1. Any time within sixty (60) months after
11 the initial sentence is imposed or within sixty (60) months after
12 probation has been revoked, the court imposing sentence or
13 revocation of probation may modify such sentence or revocation by
14 directing that another sentence be imposed, if the court is
15 satisfied that the best interests of the public will not be
16 jeopardized; provided, however, the court shall not impose a
17 deferred sentence. Any application for sentence modification that
18 is filed and ruled upon beyond twelve (12) months of the initial
19 sentence being imposed must be approved by the district attorney who
20 shall provide written notice to any victims in the case which is
21 being considered for modification.

22 2. The court imposing sentence may modify the sentence of any
23 offender who was originally sentenced for a drug charge and ordered
24 to complete the Drug Offender Work Camp at the Bill Johnson

1 Correctional Facility and direct that another sentence be imposed,
2 if the court is satisfied that the best interests of the public will
3 not be jeopardized; provided, however, the court shall not impose a
4 deferred sentence. An application for sentence modification
5 pursuant to this paragraph may be filed and ruled upon beyond the
6 initial sixty-month time period provided for in paragraph 1 of this
7 subsection.

8 3. This section shall not apply to convicted felons who have
9 been in confinement in any state or federal prison system for any
10 previous felony conviction during the ten-year period preceding the
11 date that the sentence this section applies to was imposed.
12 Further, without the consent of the district attorney, this section
13 shall not apply to sentences imposed pursuant to a plea agreement or
14 jury verdict.

15 B. The court imposing the sentence may modify the sentence of
16 any offender sentenced to life without parole for an offense other
17 than a violent crime, as enumerated in Section 571 of Title 57 of
18 the Oklahoma Statutes, who has served at least ten (10) years of the
19 sentence in the custody of the Department of Corrections upon a
20 finding that the best interests of the public will not be
21 jeopardized. Provided⁺, however, prior to granting a sentence
22 modification under the provisions of this subsection, the court
23 shall provide notice of the hearing to determine sentence
24 modification to the victim or representative of the victim and shall

1 allow the victim or representative of the victim the opportunity to
2 provide testimony at the hearing. The court shall consider the
3 testimony of the victim or representative of the victim when
4 rendering a decision to modify the sentence of an offender.

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

16 D. If the court considers modification of the sentence or
17 revocation of probation, a hearing shall be made in open court after
18 receipt of the reports required in subsection C of this section.
19 The clerk of the court imposing sentence or revocation of probation
20 shall give notice of the judicial review hearing to the Department
21 of Corrections, the offender, the legal counsel of the offender, and
22 the district attorney of the county in which the offender was
23 convicted upon receipt of the reports. Such notice shall be mailed
24 at least twenty-one (21) days prior to the hearing date and shall

1 include a copy of the report and any other written information to be
2 considered at the judicial review hearing.

3 E. If an appeal is taken from the original sentence or from a
4 revocation of probation which results in a modification of the
5 sentence or modification to the revocation of probation of the
6 offender, such sentence may be further modified in the manner
7 described in paragraph 1 of subsection A of this section within
8 sixty (60) months after the receipt by the clerk of the district
9 court of the mandate from the Supreme Court or the Court of Criminal
10 Appeals.

11 F. 1. Notwithstanding the provisions of subsections A, C or D
12 of this section, each court shall set aside the judgment and
13 sentence and resentence the following persons convicted of Section
14 2-402 of Title 63 of the Oklahoma Statutes, whether by trial or
15 plea, upon a finding that the person, if he or she committed the
16 same crime on or after July 1, 2017, would have been guilty of a
17 misdemeanor:

18 a. persons enumerated by the Department of Corrections
19 pursuant to the provisions of Section 2 of this act
20 who are currently serving a sentence of imprisonment,

21 b. persons considered for a revocation of probation
22 pursuant to the provisions of subsection G of Section
23 991b of this title, and

24

1 c. persons considered for an acceleration of a deferred
2 sentence pursuant to the provisions of subsection K of
3 Section 991c of this title.

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

6 3. If the sentence of the person includes multiple felony
7 convictions, one or more of which was reduced to a misdemeanor
8 pursuant to this subsection, the court shall reduce the sentence to
9 the length the sentence would have been if the violation of Section
10 2-402 of Title 63 of the Oklahoma Statutes was committed on or after
11 July 1, 2017.

12 4. a. The court shall resentence each person set forth in
13 subparagraph a of paragraph 1 of this subsection
14 within three (3) months of receipt of the report
15 prepared by the Department of Corrections pursuant to
16 Section 2 of this act.

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

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

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

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

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

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

15 A. On or before August 1, 2019, and every three (3) months
16 thereafter, the Director of the Department of Corrections shall
17 compile and distribute a report to each presiding judge for each
18 district court from which individuals have been sentenced and are
19 currently serving a sentence of imprisonment, including those
20 individuals whose sentences have been revoked and accelerated, for a
21 conviction pursuant to Section 2-402 of Title 63 of the Oklahoma
22 Statutes for an offense committed prior to July 1, 2017, and who
23 have more than three (3) months or more remaining until their
24 expected release dates.

1 B. The report shall include:

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

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

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

9 4. The expected remaining stay in prison.

10 C. Copies of the reports shall be made available to the public
11 upon request.

12 D. The Department shall notify each person serving a sentence
13 of imprisonment for a conviction pursuant to Section 2-402 of Title
14 63 of the Oklahoma Statutes that committed his or her offense prior
15 to July 1, 2017, and who have three (3) months or less remaining
16 until his or her expected release date, that the person has the
17 right to apply for sentence modification pursuant to Section 1080 of
18 Title 22 of the Oklahoma Statutes.

19 E. The provisions of this section shall terminate on August 1,
20 2024.

21 SECTION 3. AMENDATORY 22 O.S. 2011, Section 991b, as
22 last amended by Section 11, Chapter 128, O.S.L. 2018 (22 O.S. Supp.
23 2018, Section 991b), is amended to read as follows:
24

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

14 B. Whenever a sentence has been suspended by the court after
15 conviction of a person for any crime, the suspended sentence of the
16 person may not be revoked in whole for a technical violation unless
17 a petition setting forth the grounds for such revocation is filed by
18 the district attorney with the clerk of the sentencing court and
19 competent evidence justifying the revocation of the suspended
20 sentence is presented to the court at a hearing to be held for that
21 purpose within twenty (20) days after the entry of the plea of not
22 guilty to the petition, unless waived by both the state and the
23 defendant. The State of Oklahoma may dismiss the petition without
24 prejudice one time upon good cause shown to the court, 7 provided, 1

1 that any successor petition must be filed within forty-five (45)
2 days of the date of the dismissal of the petition. Any revocation
3 of a suspended sentence based on a technical violation shall not
4 exceed six (6) months for a first revocation and five (5) years for
5 a second or subsequent revocation.

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

- 9 1. Committing or being arrested for a new crime;
- 10 2. Attempting to falsify a drug screen, or three ~~(3)~~ or more
11 failed drug or alcohol screens within a ~~three (3) month~~ three-month
12 period;
- 13 3. Failing to pay restitution;
- 14 4. Tampering with an electronic monitoring device;
- 15 5. Failing to initially report or missing assigned reporting
16 requirements for an excess of sixty (60) days;
- 17 6. Unlawfully contacting a victim, ~~co-defendant~~ codefendant or
18 criminal associates;
- 19 7. Five ~~(5)~~ or more separate and distinct technical violations
20 within a ninety-day period; or
- 21 8. Any violation of the Specialized Sex Offender Rules.

22 D. 1. The Department of Corrections shall develop a matrix of
23 technical violations and sanctions to address violations committed
24 by persons who are being supervised by the Department. The

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

1 forms, policies and procedures necessary to implement this
2 provision. The Department of Corrections shall establish procedures
3 to hear responses to technical violations and review sanction plans
4 including the following:

- 5 a. hearing officers shall report through a chain of
6 command separate from that of the supervising
7 probation officers,
- 8 b. the Department shall provide the offender written
9 notice of the violation, the evidence relied upon, and
10 the reason the sanction was imposed,
- 11 c. the hearing shall be held unless the offender waives
12 the right to the hearing,
- 13 d. hearings shall be electronically recorded, and
- 14 e. the Department shall provide to judges and district
15 attorneys a record of all violations and actions taken
16 pursuant to this subsection.

17 2. The hearing officer shall determine based on a preponderance
18 of the evidence whether a technical violation occurred. Upon a
19 finding that a technical violation occurred, the hearing officer may
20 order the offender to participate in the recommended sanction plan
21 or may modify the plan. Offenders who accept the sanction plan
22 shall sign a violation response sanction form, and the hearing
23 officer shall then impose the sanction. Failure of the offender to
24 comply with the imposed sanction plan shall constitute a violation

1 of the rules and conditions of supervision that may result in a
2 revocation proceeding. If an offender does not voluntarily accept
3 the recommended sanction plan, the Department shall either impose
4 the sanction and allow the offender to appeal to the district court,
5 or request a revocation proceeding as provided by law. Every
6 administrative hearing and sanction imposed by the Department shall
7 be appealable to the district court.

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

11 E. 1. Where one of the grounds for revocation is the failure
12 of the defendant to make restitution as ordered, the Department of
13 Corrections shall forward to the district attorney all information
14 pertaining to the failure of the defendant to make timely
15 restitution as ordered by the court, and the district attorney shall
16 file a petition setting forth the grounds for revocation.

17 2. The defendant ordered to make restitution can petition the
18 court at any time for remission or a change in the terms of the
19 order of restitution if the defendant undergoes a change of
20 condition which materially affects the ability of the defendant to
21 comply with the order of the court.

22 3. At the hearing, if one of the grounds for the petition for
23 revocation is the failure of the defendant to make timely
24 restitution as ordered by the court, the court will hear evidence

1 and if it appears to the satisfaction of the court from such
2 evidence that the terms of the order of restitution create a
3 manifest hardship on the defendant or the immediate family of the
4 defendant, the court may cancel all or any part of the amount still
5 due, or modify the terms or method of payment. Provided, if the
6 court determines that a reduction in the restitution still due is
7 warranted, the court shall equally apply the same percentage
8 reduction to any court-ordered monetary obligation owed by the
9 defendant including, but not limited to, fines, court costs and
10 costs of incarceration.

11 F. The court may revoke a portion of the sentence and leave the
12 remaining part not revoked, but suspended for the remainder of the
13 term of the sentence, and under the provisions applying to it. The
14 person whose suspended sentence is being considered for revocation
15 at the hearing shall have the right to be represented by counsel, to
16 present competent evidence in his or her own behalf and to be
17 confronted by the witnesses against the defendant. Any order of the
18 court revoking the suspended sentence, in whole or in part, shall be
19 subject to review on appeal, as in other appeals of criminal cases.
20 Provided, however, that if the crime for which the suspended
21 sentence is given was a felony, the defendant may be allowed bail
22 pending appeal. If the reason for revocation be that the defendant
23 committed a felony, the defendant shall not be allowed bail pending
24 appeal.

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

6 1. Have further proceedings under this section deferred;

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

8 and

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

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

14 SECTION 4. AMENDATORY 22 O.S. 2011, Section 991c, as
15 last amended by Section 12, Chapter 128, O.S.L. 2018 (22 O.S. Supp.
16 2018, Section 991c), is amended to read as follows:

17 Section 991c. A. Upon a verdict or plea of guilty or upon a
18 plea of nolo contendere, but before a judgment of guilt, the court
19 may, without entering a judgment of guilt and with the consent of
20 the defendant, defer further proceedings upon the specific
21 conditions prescribed by the court not to exceed a seven-year
22 period, except as authorized under subsection B of this section.
23 The court shall first consider restitution among the various
24

1 conditions it may prescribe. The court may also consider ordering
2 the defendant to:

3 1. Pay court costs;

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

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

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

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

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

16 7. Be supervised in the community for a period not to exceed
17 eighteen (18) months, unless a petition alleging violation of any
18 condition of deferred judgment is filed during the period of
19 supervision. As a condition of any supervision, the defendant shall
20 be required to pay a supervision fee of Forty Dollars (\$40.00) per
21 month. The supervision fee shall be waived in whole or part by the
22 supervisory agency when the accused is indigent. No person shall be
23 denied supervision based solely on the inability of the person to
24 pay a fee;

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

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

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

12 11. Any combination of the above provisions.

13 However, unless under the supervision of the district attorney,
14 the offender shall be required to pay Forty Dollars (\$40.00) per
15 month to the district attorney during the first two (2) years of
16 probation to compensate the district attorney for the costs incurred
17 during the prosecution of the offender and for the additional work
18 of verifying the compliance of the offender with the rules and
19 conditions of his or her probation. The district attorney may waive
20 any part of this requirement in the best interests of justice. The
21 court shall not waive, suspend, defer or dismiss the costs of
22 prosecution in its entirety. However, if the court determines that
23 a reduction in the fine, costs and costs of prosecution is
24 warranted, the court shall equally apply the same percentage

1 reduction to the fine, costs and costs of prosecution owed by the
2 offender.

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

8 C. In addition to any conditions of supervision provided for in
9 subsection A of this section, the court shall, in the case of a
10 person before the court for the offense of operating or being in
11 control of a motor vehicle while the person was under the influence
12 of alcohol, other intoxicating substance, or a combination of
13 alcohol and another intoxicating substance, or who is before the
14 court for the offense of operating a motor vehicle while the ability
15 of the person to operate such vehicle was impaired due to the
16 consumption of alcohol, require the person to participate in an
17 alcohol and drug substance abuse evaluation program offered by a
18 facility or qualified practitioner certified by the Department of
19 Mental Health and Substance Abuse Services for the purpose of
20 evaluating the receptivity to treatment and prognosis of the person.
21 The court shall order the person to reimburse the facility or
22 qualified practitioner for the evaluation. The Department of Mental
23 Health and Substance Abuse Services shall establish a fee schedule,
24 based upon the ability of a person to pay, provided the fee for an

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

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

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

17 2. A victims impact panel program, as defined in subsection H
18 of Section 991a of this title, if such a program is offered in the
19 county where the judgment is rendered. The defendant shall be
20 required to pay a fee of not less than Fifteen Dollars (\$15.00) nor
21 more than Sixty Dollars (\$60.00) as set by the governing authority
22 of the program and approved by the court to the victims impact panel
23 program to offset the cost of participation by the defendant, if in
24

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

3 D. 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 defendant shall be discharged without a court judgment
7 of guilt, and the court shall order the verdict or plea of guilty or
8 plea of nolo contendere to be expunged from the record and the
9 charge shall be dismissed with prejudice to any further action. The
10 procedure to expunge the record of the defendant shall be as
11 follows:

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

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

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

19 4. No information concerning the confidential file shall be
20 revealed or released, except upon written order of a judge of the
21 district court or upon written request by the named defendant to the
22 court clerk for the purpose of updating the criminal history record
23 of the defendant with the Oklahoma State Bureau of Investigation;
24 and

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

5 Records expunged pursuant to this subsection shall be sealed to
6 the public but not to law enforcement agencies for law enforcement
7 purposes. Records expunged pursuant to this subsection shall be
8 admissible in any subsequent criminal prosecution to prove the
9 existence of a prior conviction or prior deferred judgment without
10 the necessity of a court order requesting the unsealing of such
11 records.

12 E. The provisions of subsection D of this section shall be
13 retroactive.

14 F. Whenever a judgment has been deferred by the court according
15 to the provisions of this section, deferred judgment may not be
16 accelerated for any technical violation unless a petition setting
17 forth the grounds for such acceleration is filed by the district
18 attorney with the clerk of the sentencing court and competent
19 evidence justifying the acceleration of the judgment is presented to
20 the court at a hearing to be held for that purpose. The hearing
21 shall be held not more than twenty (20) days after the entry of the
22 plea of not guilty to the petition, unless waived by both the state
23 and the defendant. Any acceleration of a deferred sentence based on
24 a technical violation shall not exceed ninety (90) days for a first

1 acceleration or five (5) years for a second or subsequent
2 acceleration.

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

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

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

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

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

24

1 K. Notwithstanding the provisions of subsections F and G of
2 this section, a person who is being considered for an acceleration
3 of a deferred judgment pursuant to Section 2-402 of Title 63 of the
4 Oklahoma Statutes, and who committed the offense prior to July 1,
5 2017, shall:

- 6 1. Have further proceedings under this section deferred;
- 7 2. Have his or her underlying judgment set aside; and
- 8 3. Be resentenced pursuant to the provisions of subsection F of
9 Section 982a of this title.

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

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

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

17 ~~(a) that~~ 1. That the conviction or the sentence was in
18 violation of the Constitution of the United States or the
19 Constitution or laws of this state;

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

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

24

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

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

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

12 7. That the conviction or sentence was for a felony offense for
13 which the same act or acts that resulted in the felony conviction
14 or sentence have subsequently been changed by law to a misdemeanor;
15 or

16 8. That the maximum penalty for the offense of which the
17 defendant was convicted has subsequently been lowered and the
18 defendant was sentenced to a penalty that exceeds the maximum
19 sentence currently authorized by law for the offense,
20 may institute a proceeding under this act in the court in which the
21 judgment and sentence on conviction was imposed to secure the
22 appropriate relief. Excluding a timely appeal, this act encompasses
23 and replaces all common law and statutory methods of challenging a
24 conviction or sentence. Nothing in this section shall be construed

1 to create a civil cause of action related to a change in the law
2 governing the conviction of an applicant.

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

6 Section 1083. A. Within thirty (30) days after the docketing
7 of the application, or within any further time the court may fix,
8 the state shall respond by answer or by motion which may be
9 supported by affidavits. When an applicant asserts a claim of
10 ineffective assistance of counsel, the state shall have ninety (90)
11 days after the docketing of the application to respond by answer or
12 by motion. In considering the application, the court shall take
13 account of substance, regardless of defects of form. If the
14 application is not accompanied by the record of the proceedings
15 challenged therein, the respondent shall file with its answer the
16 record or portions thereof that are material to the questions raised
17 in the application; or such records may be ordered by the court.
18 The court may also allow depositions and affidavits for good cause
19 shown.

20 B. When a court is satisfied, on the basis of the application,
21 the answer or motion of respondent, and the record, that the
22 applicant is not entitled to post-conviction relief and no purpose
23 would be served by any further proceedings, it may order the
24 application dismissed or grant leave to file an amended application.

1 Disposition on the pleadings and record is not proper if there
2 exists a material issue of fact. The judge assigned to the case
3 should not dispose of it on the basis of information within his
4 personal knowledge not made a part of the record.

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

11 D. When an application is filed pursuant to paragraph 7 or 8 of
12 Section 1080 of this title, the court shall presume that the
13 applicant is entitled to relief unless the state proves by clear and
14 convincing evidence that the provision of law governing the
15 conviction of the applicant has not changed or that the record
16 rebutts the claim by the applicant.

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

19 Section 1085. If the court finds in favor of the applicant, it
20 shall vacate and set aside the judgment and sentence and discharge
21 or resentence him, or grant a new trial, or correct or modify the
22 judgment and sentence as may appear appropriate. The court shall
23 enter any supplementary orders as to rearraignment, retrial,
24 custody, bail, discharge, or other matters that may be necessary and

1 proper. If the court determines that an applicant is entitled to
2 have his or her conviction reclassified as a misdemeanor pursuant to
3 paragraph 7 of Section 1080 of this title, the conviction shall be
4 considered a misdemeanor for all purposes.

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

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