

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1269

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

and

Bice and Young of the
Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the expungement of criminal records and commutations; amending 22 O.S. 2011, Section 18, as last amended by Section 1, Chapter 127, O.S.L. 2018 (22 O.S. Supp. 2018, Section 18), which relates to the expungement of criminal records; authorizing certain persons to file petition for expungement of criminal records; updating internal citation; providing statutory forms for petition to expunge records; amending 22 O.S. 2011, Section 991b, as last amended by Section 11, Chapter 128, O.S.L. 2018 (22 O.S. Supp. 2018, Section 991b), which relates to revocation of suspended sentences; updating language; providing for modification of sentences under certain circumstances; 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; providing for modification of judgment and sentences for certain persons considered for acceleration; amending 57 O.S. 2011, Section 332.2, as last amended by Section 1, Chapter 117, O.S.L. 2018 (57 O.S. Supp. 2018, Section 332.2), which relates to procedures for applications for commutations and pardons; directing the Pardon and Parole Board to establish specialized commutation docket for certain eligible applicants;

1 empowering the Board to recommend commutations to the
2 Governor; directing the Department of Corrections to
3 certify list of potentially eligible inmates to the
4 Board by certain date; providing for codification;
5 and providing an effective date.

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

7 SECTION 1. AMENDATORY 22 O.S. 2011, Section 18, as last
8 amended by Section 1, Chapter 127, O.S.L. 2018 (22 O.S. Supp. 2018,
9 Section 18), is amended to read as follows:

10 Section 18. A. Persons authorized to file a motion for
11 expungement, as provided herein, must be within one of the following
12 categories:

13 1. The person has been acquitted;

14 2. The conviction was reversed with instructions to dismiss by
15 an appellate court of competent jurisdiction, or an appellate court
16 of competent jurisdiction reversed the conviction and the
17 prosecuting agency subsequently dismissed the charge;

18 3. The factual innocence of the person was established by the
19 use of deoxyribonucleic acid (DNA) evidence subsequent to
20 conviction, including a person who has been released from prison at
21 the time innocence was established;

22 4. The person has received a full pardon on the basis of a
23 written finding by the Governor of actual innocence for the crime
24 for which the claimant was sentenced;

1 5. The person was arrested and no charges of any type,
2 including charges for an offense different than that for which the
3 person was originally arrested, are filed and the statute of
4 limitations has expired or the prosecuting agency has declined to
5 file charges;

6 6. The person was under eighteen (18) years of age at the time
7 the offense was committed and the person has received a full pardon
8 for the offense;

9 7. The person was charged with one or more misdemeanor or
10 felony crimes, all charges have been dismissed, the person has never
11 been convicted of a felony, no misdemeanor or felony charges are
12 pending against the person and the statute of limitations for
13 refiling the charge or charges has expired or the prosecuting agency
14 confirms that the charge or charges will not be refiled; provided,
15 however, this category shall not apply to charges that have been
16 dismissed following the completion of a deferred judgment or delayed
17 sentence;

18 8. The person was charged with a misdemeanor, the charge was
19 dismissed following the successful completion of a deferred judgment
20 or delayed sentence, the person has never been convicted of a
21 felony, no misdemeanor or felony charges are pending against the
22 person and at least one (1) year has passed since the charge was
23 dismissed;

24

1 9. The person was charged with a nonviolent felony offense not
2 listed in Section 571 of Title 57 of the Oklahoma Statutes, the
3 charge was dismissed following the successful completion of a
4 deferred judgment or delayed sentence, the person has never been
5 convicted of a felony, no misdemeanor or felony charges are pending
6 against the person and at least five (5) years have passed since the
7 charge was dismissed;

8 10. The person was convicted of a misdemeanor offense, the
9 person was sentenced to a fine of less than Five Hundred One Dollars
10 (\$501.00) without a term of imprisonment or a suspended sentence,
11 the fine has been paid or satisfied by time served in lieu of the
12 fine, the person has not been convicted of a felony and no felony or
13 misdemeanor charges are pending against the person;

14 11. The person was convicted of a misdemeanor offense, the
15 person was sentenced to a term of imprisonment, a suspended sentence
16 or a fine in an amount greater than Five Hundred Dollars (\$500.00),
17 the person has not been convicted of a felony, no felony or
18 misdemeanor charges are pending against the person and at least five
19 (5) years have passed since the end of the last misdemeanor
20 sentence;

21 12. The person was convicted of a nonviolent felony offense not
22 listed in Section 571 of Title 57 of the Oklahoma Statutes, the
23 person has not been convicted of any other felony or separate
24 misdemeanor in the last seven (7) years, no felony or misdemeanor

1 charges are pending against the person and at least five (5) years
2 have passed since the completion of the sentence for the felony
3 conviction;

4 13. The person was convicted of not more than two nonviolent
5 felony offenses, not listed in Section 571 of Title 57 of the
6 Oklahoma Statutes, the person has received a full pardon for both of
7 the nonviolent felony offenses, no felony or misdemeanor charges are
8 pending against the person, and at least twenty (20) years have
9 passed since the last misdemeanor or felony conviction; ~~or~~

10 14. The person has been charged or arrested or is the subject
11 of an arrest warrant for a crime that was committed by another
12 person who has appropriated or used the person's name or other
13 identification without the person's consent or authorization; or

14 15. The person was convicted of a nonviolent felony offense not
15 listed in Section 571 of Title 57 of the Oklahoma Statutes which was
16 subsequently reclassified as a misdemeanor under Oklahoma law, the
17 person is not currently serving a sentence for a crime in this state
18 or another state, at least thirty (30) days have passed since the
19 completion or commutation of the sentence for the crime that was
20 reclassified as a misdemeanor, any restitution ordered by the court
21 to be paid by the person has been satisfied in full, and any
22 treatment program ordered by the court has been successfully
23 completed by the person, including any person who failed a treatment
24 program which resulted in an accelerated or revoked sentence that

1 has since been successfully completed by the person or the person
2 can show successful completion of a treatment program at a later
3 date. Persons seeking an expungement of records under the
4 provisions of this paragraph may utilize the expungement forms
5 provided in Section 2 of this act.

6 B. For purposes of Section 18 et seq. of this title,
7 "expungement" shall mean the sealing of criminal records, as well as
8 any public civil record, involving actions brought by and against
9 the State of Oklahoma arising from the same arrest, transaction or
10 occurrence.

11 C. For purposes of seeking an expungement under the provisions
12 of paragraph 10, 11, 12 or 13 of subsection A of this section,
13 offenses arising out of the same transaction or occurrence shall be
14 treated as one conviction and offense.

15 D. Records expunged pursuant to paragraphs 8, 9, 10, 11, 12, 13
16 ~~and~~, 14 and 15 of subsection A of this section shall be sealed to
17 the public but not to law enforcement agencies for law enforcement
18 purposes. Records expunged pursuant to paragraphs 8, 9, 10, 11, 12
19 and 13 of subsection A of this section shall be admissible in any
20 subsequent criminal prosecution to prove the existence of a prior
21 conviction or prior deferred judgment without the necessity of a
22 court order requesting the unsealing of the records. Records
23 expunged pursuant to paragraph 4, 6, 12 or 13 of subsection A of
24 this section may also include the sealing of Pardon and Parole Board

1 records related to an application for a pardon. Such records shall
2 be sealed to the public but not to the Pardon and Parole Board.

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 18a of Title 22, unless there is
5 created a duplication in numbering, reads as follows:

6 The following statutory forms of Petition to Expunge Records
7 Pursuant to Title 22 O.S. Sections 18 and 19 and Order to Expunge
8 Records Pursuant to Title 22 O.S. Sections 18 and 19, as authorized
9 by Section 1 of this act, may be utilized for persons seeking an
10 expungement of records under the provisions of paragraph 15 of
11 subsection A of Section 18 of Title 22 of the Oklahoma Statutes:

12 IN THE DISTRICT COURT OF _____ COUNTY

13 STATE OF OKLAHOMA

14	_____ ,)	
)	
15	Petitioner,)	
)	
16)	
)	
17	vs.)	Case No. _____
)	
18	_____)	
)	
19)	
)	
20	THE STATE OF OKLAHOMA,)	
)	
21)	
)	
22	Respondent.)	

23 PETITION TO EXPUNGE RECORDS

24 PURSUANT TO TITLE 22 O.S. SECTIONS 18 AND 19

1 COMES NOW, the Petitioner and respectfully moves this Court to
2 expunge the criminal history records of the Petitioner pursuant to
3 paragraph 15 of subsection A of Section 18 and Section 19 of Title
4 22 of the Oklahoma Statutes.

5 PETITIONER INFORMATION:

6 _____
7 (Last name) (First name) (Middle name)

8 _____
9 (Address)

10 _____
11 (Phone Number)

12 _____
13 (Date of Birth) (Social Security Number)

14 CRIMINAL CASE INFORMATION:

15 Name and Address of Arresting Agency: Date of Arrest:

16 _____

17 _____

18 _____

19 Name and Address of Other Agency:

20 (List any state or local government agency that has a record of your
21 case.)

22 _____

23 _____

24 _____

1 Case Number to be Expunged: _____

2 Charge to be Expunged: _____

3 * Information on your criminal case may be found at www.oscn.net.

4 I, the above-named Petitioner, hereby petition this Court for an
5 expungement of criminal records pursuant to paragraph 15 of
6 subsection A of Section 18 of Title 22 of the Oklahoma Statutes and
7 certify as follows:

8 1. In this court of the county named above, I was charged and
9 convicted of a nonviolent felony offense not listed in Section 571
10 of Title 57 of the Oklahoma Statutes;

11 2. That the nonviolent felony offense I was charged and
12 convicted of has been reclassified as a misdemeanor offense under
13 Oklahoma law;

14 3. That I am not currently serving a sentence for a crime in
15 this state or another state;

16 4. At least thirty (30) days have passed since either the
17 completion of my sentence or the commutation of my sentence for the
18 crime that was reclassified as a misdemeanor;

19 5. That all restitution (if any) ordered by the court to be
20 paid by me in this case has been satisfied in full;

21 6. That I have successfully completed any and all treatment
22 program(s) ordered by the court, successfully completed an
23 accelerated or revoked sentence or successfully completed a
24 treatment program at a later date; and

1 7. That the harm to the Petitioner's privacy or danger of
2 unwarranted adverse consequences outweighs the public's interest in
3 retaining said records.

4 I declare under penalty of perjury that the statements made
5 herein are true and correct to the best of my knowledge, information
6 and belief.

7 _____
8 Date Signature of Petitioner
9 Name (Print): _____

10 IN THE DISTRICT COURT OF _____ COUNTY
11 STATE OF OKLAHOMA

12 _____,)
13 Petitioner,)
14 vs.) Case No. _____
15 _____)
16)
17 THE STATE OF OKLAHOMA,)
18)
19 Respondent.)

20 ORDER TO EXPUNGE RECORDS
21 PURSUANT TO TITLE 22 O.S. SECTIONS 18 AND 19

22 NOW on this _____ day of _____,
23 20_____, after consideration of the Petition to Expunge Records

1 Pursuant to Title 22 O.S. Sections 18 and 19, presented by _____
2 _____, it is so ORDERED that:

3 [] The Petition is hereby GRANTED. The Petitioner qualifies
4 for an expungement of records pursuant to paragraph 15 of
5 subsection A of Section 18 of Title 22 of the Oklahoma
6 Statutes. The Court finds that the harm to the Petitioner's
7 privacy or danger of unwarranted adverse consequences
8 outweighs the public's interest in retaining said records.
9 The Court further finds that the law enforcement agencies
10 listed in the Petition to Expunge Records shall seal all of
11 the court, arrest and criminal history records of the
12 Petitioner pursuant to the provisions of Section 19 of Title
13 22 of the Oklahoma Statutes. Upon the entry of this order
14 to seal the records, or any part thereof, the subject
15 official actions shall be deemed never to have occurred, and
16 the person in interest and all criminal justice agencies may
17 properly reply, upon any inquiry in the matter, that no such
18 action ever occurred and that no such record exists with
19 respect to such person. Inspection of the records included
20 in the order may thereafter be permitted by the court only
21 upon petition by the person in interest who is the subject
22 of such records, the Attorney General, or by the district
23 attorney and only to those persons and for such purposes
24 named in such petition. Employers, educational

1 institutions, state and local government agencies,
2 officials, and employees shall not, in any application or
3 interview or otherwise, require an applicant to disclose any
4 information contained in sealed records. An applicant need
5 not, in answer to any question concerning arrest and
6 criminal records, provide information that has been sealed,
7 including any reference to or information concerning such
8 sealed information, and may state that no such action has
9 ever occurred. Such an application may not be denied solely
10 because of the applicant's refusal to disclose arrest and
11 criminal records information that has been sealed.

12 [] The Petition is hereby DENIED.

13 IT IS SO ORDERED.

14 JUDGE OF THE DISTRICT COURT
15 _____

16 SECTION 3. AMENDATORY 22 O.S. 2011, Section 991b, as
17 last amended by Section 11, Chapter 128, O.S.L. 2018 (22 O.S. Supp.
18 2018, Section 991b), is amended to read as follows:

19 Section 991b. A. Whenever a sentence has been suspended by the
20 court after conviction of a person for any crime, the suspended
21 sentence of the person may not be revoked, in whole or part, for any
22 cause unless a petition setting forth the grounds for such
23 revocation is filed by the district attorney with the clerk of the
24 sentencing court and competent evidence justifying the revocation of

1 the suspended sentence is presented to the court at a hearing to be
2 held for that purpose within twenty (20) days after the entry of the
3 plea of not guilty to the petition, unless waived by both the state
4 and the defendant. The State of Oklahoma may dismiss the petition
5 without prejudice one time upon good cause shown to the court,
6 provided that any successor petition must be filed within forty-five
7 (45) days of the date of the dismissal of the petition.

8 B. Whenever a sentence has been suspended by the court after
9 conviction of a person for any crime, the suspended sentence of the
10 person may not be revoked in whole for a technical violation unless
11 a petition setting forth the grounds for such revocation is filed by
12 the district attorney with the clerk of the sentencing court and
13 competent evidence justifying the revocation of the suspended
14 sentence is presented to the court at a hearing to be held for that
15 purpose within twenty (20) days after the entry of the plea of not
16 guilty to the petition, unless waived by both the state and the
17 defendant. The State of Oklahoma may dismiss the petition without
18 prejudice one time upon good cause shown to the court, provided,
19 that any successor petition must be filed within forty-five (45)
20 days of the date of the dismissal of the petition. Any revocation
21 of a suspended sentence based on a technical violation shall not
22 exceed six (6) months for a first revocation and five (5) years for
23 a second or subsequent revocation.

24

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

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

17 D. 1. The Department of Corrections shall develop a matrix of
18 technical violations and sanctions to address violations committed
19 by persons who are being supervised by the Department. The
20 Department shall be authorized to use a violation response and
21 intermediate sanction process based on the sanction matrix to apply
22 to any technical violations of probationers. Within four (4)
23 working days of the discovery of the violation, the probation
24 officer shall initiate the violation response and intermediate

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

24

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

2. The hearing officer shall determine based on a preponderance of the evidence whether a technical violation occurred. Upon a finding that a technical violation occurred, the hearing officer may order the offender to participate in the recommended sanction plan or may modify the plan. Offenders who accept the sanction plan shall sign a violation response sanction form, and the hearing officer shall then impose the sanction. Failure of the offender to comply with the imposed sanction plan shall constitute a violation of the rules and conditions of supervision that may result in a revocation proceeding. If an offender does not voluntarily accept the recommended sanction plan, the Department shall either impose the sanction and allow the offender to appeal to the district court,

1 or request a revocation proceeding as provided by law. Every
2 administrative hearing and sanction imposed by the Department shall
3 be appealable to the district court.

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

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

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

18 3. At the hearing, if one of the grounds for the petition for
19 revocation is the failure of the defendant to make timely
20 restitution as ordered by the court, the court will hear evidence
21 and if it appears to the satisfaction of the court from such
22 evidence that the terms of the order of restitution create a
23 manifest hardship on the defendant or the immediate family of the
24 defendant, the court may cancel all or any part of the amount still

1 due, or modify the terms or method of payment. Provided, if the
2 court determines that a reduction in the restitution still due is
3 warranted, the court shall equally apply the same percentage
4 reduction to any court-ordered monetary obligation owed by the
5 defendant including, but not limited to, fines, court costs and
6 costs of incarceration.

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

21 G. Notwithstanding the provisions of subsections A and B of
22 this section, when the suspended sentence of a person is being
23 considered for revocation for an offense where the penalty has
24 subsequently been lowered to a misdemeanor, the sentence shall be

1 modified to a term that does not exceed the current maximum
2 sentence.

3 SECTION 4. AMENDATORY 22 O.S. 2011, Section 991c, as
4 last amended by Section 12, Chapter 128, O.S.L. 2018 (22 O.S. Supp.
5 2018, Section 991c), is amended to read as follows:

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

- 15 1. Pay court costs;
- 16 2. Pay an assessment in lieu of any fine authorized by law for
17 the offense;
- 18 3. Pay any other assessment or cost authorized by law;
- 19 4. Engage in a term of community service without compensation,
20 according to a schedule consistent with the employment and family
21 responsibilities of the defendant;
- 22 5. County jail confinement for a period not to exceed ninety
23 (90) days or the maximum amount of jail time provided for the
24 offense, if it is less than ninety (90) days;

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

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

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

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

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

24 11. Any combination of the above provisions.

1 However, unless under the supervision of the district attorney,
2 the offender shall be required to pay Forty Dollars (\$40.00) per
3 month to the district attorney during the first two (2) years of
4 probation to compensate the district attorney for the costs incurred
5 during the prosecution of the offender and for the additional work
6 of verifying the compliance of the offender with the rules and
7 conditions of his or her probation. The district attorney may waive
8 any part of this requirement in the best interests of justice. The
9 court shall not waive, suspend, defer or dismiss the costs of
10 prosecution in its entirety. However, if the court determines that
11 a reduction in the fine, costs and costs of prosecution is
12 warranted, the court shall equally apply the same percentage
13 reduction to the fine, costs and costs of prosecution owed by the
14 offender.

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

20 C. In addition to any conditions of supervision provided for in
21 subsection A of this section, the court shall, in the case of a
22 person before the court for the offense of operating or being in
23 control of a motor vehicle while the person was under the influence
24 of alcohol, other intoxicating substance, or a combination of

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

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

1 September 1, 1995. The court may also require the person to
2 participate in one or both of the following:

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

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

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

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

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

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

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

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

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

23 E. The provisions of subsection D of this section shall be
24 retroactive.

1 F. Whenever a judgment has been deferred by the court according
2 to the provisions of this section, deferred judgment may not be
3 accelerated for any technical violation unless a petition setting
4 forth the grounds for such acceleration is filed by the district
5 attorney with the clerk of the sentencing court and competent
6 evidence justifying the acceleration of the judgment is presented to
7 the court at a hearing to be held for that purpose. The hearing
8 shall be held not more than 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. Any acceleration of a deferred sentence based on
11 a technical violation shall not exceed ninety (90) days for a first
12 acceleration or five (5) years for a second or subsequent
13 acceleration.

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

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

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 for an offense where the penalty has
14 subsequently been lowered to a misdemeanor shall only be subject to
15 a judgment and sentence that would have been applicable had he or
16 she committed the offense after July 1, 2017.

17 SECTION 5. AMENDATORY 57 O.S. 2011, Section 332.2, as
18 last amended by Section 1, Chapter 117, O.S.L. 2018 (57 O.S. Supp.
19 2018, Section 332.2), is amended to read as follows:

20 Section 332.2 A. The Pardon and Parole Board, which shall meet
21 only on the call of the Chairman, is authorized, if and when an
22 application made to the Governor for a reprieve, commutation,
23 parole, pardon, or other act of clemency is certified thereto by the
24 Governor, to examine into the merits of said application and make

1 recommendations to the Governor in relation thereto, said
2 recommendation being advisory to the Governor and not binding
3 thereon.

4 B. Any consideration for commutation shall be made only after
5 application is made to the Pardon and Parole Board pursuant to the
6 procedures set forth in this section. The Pardon and Parole Board
7 shall provide a copy of the application to the district attorney,
8 the victim or representative of the victim and the Office of the
9 Attorney General within ten (10) business days of receipt of such
10 application.

11 C. An application for commutation, other than those provided
12 for in subsection F of this section, must be sent to the trial
13 officials, who shall have twenty (20) business days to provide a
14 written recommendation or protest prior to consideration of the
15 application. Trial officials shall include:

- 16 1. The current elected judge of the court where the conviction
17 was had;
- 18 2. The current elected district attorney of the jurisdiction
19 where the conviction was had; or
- 20 3. The chief or head administrative officer of the arresting
21 law enforcement agency.

22 D. In cases resolved prior to the tenure of the present
23 officeholders, the recommendation or protest of persons holding such
24

1 offices at the time of conviction may also be considered by the
2 Board.

3 E. The recommendation for commutation of a sentence by a trial
4 official may include the following:

5 1. A statement that the penalty now appears to be excessive;

6 2. A recommendation of a definite term now considered by the
7 official as just and proper; and

8 3. A statement of the reasons for the recommendation based upon
9 facts directly related to the case which were not available to the
10 court or jury at the time of the trial or based upon there having
11 been a statutory change in penalty for the crime which makes the
12 original penalty appear excessive.

13 F. The Pardon and Parole Board shall establish an accelerated,
14 single-stage commutation docket for any applicant who has been
15 convicted of a crime that has been reclassified from a felony to a
16 misdemeanor under Oklahoma law. The Pardon and Parole Board shall
17 be empowered to recommend to the Governor for commutation, by
18 majority vote, any commutation application placed on the
19 accelerated, single-stage commutation docket that meets the
20 eligibility criteria provided above. The Department of Corrections
21 shall certify a list of potentially eligible inmates to the Pardon
22 and Parole Board within thirty (30) days of the effective date of
23 this act.

24

1 G. The Pardon and Parole Board shall schedule the application
2 on a commutation docket in compliance with the notice requirements
3 set forth herein. The Board shall provide the victim or
4 representative of the victim at least twenty (20) days to offer
5 recommendations or protests before consideration of the application.

6 ~~G.~~ H. Applications for commutation shall be given impartial
7 review as required in Section 10 of Article VI of the Oklahoma
8 Constitution.

9 ~~H.~~ I. Any consideration for pardon shall be made only after
10 application is made to the Pardon and Parole Board. Upon receipt of
11 an application for pardon, the Board shall provide a copy of the
12 application to the district attorney, the victim or representative
13 of the victim and the Office of the Attorney General within twenty
14 (20) business days of receipt of such application. The district
15 attorney and the victim or representative of the victim shall have
16 twenty (20) business days to provide written recommendation or
17 protest prior to the consideration of the application. The Board
18 shall schedule the application on a pardon docket in compliance with
19 the notice requirements set forth herein.

20 ~~I.~~ J. In accordance with Section 10 of Article VI of the
21 Oklahoma Constitution, the Board shall communicate to the
22 Legislature, at each regular session, by providing a summary of the
23 activities of the Board. This summary shall include, but not be
24 limited to, the following Board activity:

1 1. The approval or recommendation rates of the Board for both
2 violent and nonviolent offenses;

3 2. The parole approval rates for each individual Board member
4 for both violent and nonviolent offenses; and

5 3. The percentage of public comments to and personal
6 appearances before the Board including victim protests and personal
7 appearances, district attorney protests and personal appearances,
8 and delegate recommendations and personal appearances on behalf of
9 the offender.

10 This summary shall be made available to the public through
11 publication on the website of the Pardon and Parole Board.

12 ~~J.~~ K. The Pardon and Parole Board shall provide a copy of their
13 regular docket and administrative parole docket to each district
14 attorney in this state at least twenty (20) days before such docket
15 is considered by the Board, or in the case of a supplemental,
16 addendum or special docket, at least ten (10) days before such
17 docket is considered by the Board, and shall notify the district
18 attorney of any recommendations for commutations or paroles no later
19 than twenty (20) days after the docket is considered by the Board.

20 ~~K.~~ L. The Pardon and Parole Board shall notify all victims or
21 representatives of the victim in writing at least twenty (20) days
22 before an inmate is considered by the Board provided the Board has
23 received a request from the victim or representatives of the victim
24 for notice. The Board shall provide all victims or representatives

1 of the victim with the date, time and place of the scheduled meeting
2 and rules for attendance and providing information or input to the
3 Board regarding the inmate or the crime. If requested by the victim
4 or representatives of the victim, the Board shall allow the victim
5 or representatives of the victim to testify at the parole hearing of
6 the inmate for at least five (5) minutes.

7 ~~E.~~ M. The Pardon and Parole Board shall notify all victims or
8 representatives of the victim in writing of the decision of the
9 Board no later than twenty (20) days after the inmate is considered
10 by the Board.

11 ~~M.~~ N. Any notice required to be provided to the victims or the
12 representatives of the victim shall be mailed by first-class mail to
13 the last-known address of the victim or representatives of the
14 victim. It is the responsibility of the victims or representatives
15 of the victim to provide the Pardon and Parole Board a current
16 mailing address. The victim-witness coordinator of the district
17 attorney shall assist the victims or representatives of the victim
18 with supplying their address to the Board if they wish to be
19 notified. Upon failure of the Pardon and Parole Board to notify a
20 victim who has requested notification and has provided a current
21 mailing address, the final decision of the Board may be voidable,
22 provided, the victim who failed to receive notification requests a
23 reconsideration hearing within thirty (30) days of the
24 recommendation by the Board for parole. The Pardon and Parole Board

1 may reconsider previous action and may rescind a recommendation if
2 deemed appropriate as determined by the Board.

3 ~~N.~~ O. For purposes of this section, "victim" shall mean all
4 persons who have suffered direct or threatened physical or emotional
5 harm, or financial loss as the result of the commission or attempted
6 commission of criminally injurious conduct, and "representatives of
7 the victim" shall mean those persons who are members of the
8 immediate family of the victim, including stepparents, stepbrothers,
9 stepsisters, and stepchildren.

10 ~~O.~~ P. All meetings of the Pardon and Parole Board shall comply
11 with Section 301 et seq. of Title 25 of the Oklahoma Statutes;
12 provided that the Board shall have the authority to limit the number
13 of persons attending in support of, or in opposition to, any inmate
14 being considered for parole and shall have the authority to exclude
15 persons from attendance in accordance with prison security
16 regulations and the capacity of the meeting room. Persons excluded
17 from attending the meeting under this provision shall be informed of
18 their right to be informed of the vote of the Board in accordance
19 with Section 312 of Title 25 of the Oklahoma Statutes. Provided
20 further, nothing in this section shall be construed to prevent any
21 member of the press or any public official from attending any
22 meeting of the Pardon and Parole Board, except as provided by the
23 Oklahoma Open Meeting Act.

24

1 ~~P.~~ Q. All victim information maintained by the Department of
2 Corrections and the Pardon and Parole Board shall be confidential
3 and shall not be released.

4 SECTION 6. This act shall become effective November 1, 2019.

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