

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 3659

By: Kannady

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6
7 COMMITTEE SUBSTITUTE

8 An Act relating to criminal procedure; amending 22
9 O.S. 2011, Sections 18, as last amended by Section 1,
10 Chapter 459, O.S.L. 2019 and 19, as last amended by
11 Section 2, Chapter 348, O.S.L. 2016 (22 O.S. Supp.
12 2019, Sections 18 and 19), which relate to the
13 expungement of criminal arrest records; modifying
14 certain expungement categories; adding expungement
15 category; updating internal citations; clarifying
16 expungement filing procedures; amending Section 2,
17 Chapter 243, O.S.L. 2015, as amended by Section 3,
18 Chapter 128, O.S.L. 2018 (22 O.S. Supp. 2019, Section
19 985.1), which relates to the Justice Safety Valve
20 Act; authorizing courts to deviate from specific
21 statutory restraints and prohibitions on probation
22 when sentencing a person; clarifying and deleting
23 circumstances that prohibit courts from departing
24 from mandatory minimum sentences; defining terms;
amending 22 O.S. 2011, Section 991c, as last amended
by Section 4, Chapter 459, O.S.L. 2019 (22 O.S. Supp.
2019, Section 991c), which relates to deferred
sentences; allowing judicial findings to be made at a
hearing, by verified application or by presentation
of an agreed order of dismissal; and providing an
effective date.

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

1 SECTION 1. AMENDATORY 22 O.S. 2011, Section 18, as last
2 amended by Section 1, Chapter 459, O.S.L. 2019 (22 O.S. Supp. 2019,
3 Section 18), is amended to read as follows:

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

7 1. The person has been acquitted;

8 2. The conviction was reversed with instructions to dismiss by
9 an appellate court of competent jurisdiction, or an appellate court
10 of competent jurisdiction reversed the conviction and the
11 prosecuting agency subsequently dismissed the charge;

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

16 4. The person has received a full pardon by the Governor for
17 the crime for which the person was sentenced;

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

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

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

13 8. The person was charged with a misdemeanor, the charge was
14 dismissed within two (2) years from the date of arrest following the
15 successful completion of a deferred judgment, suspended sentence or
16 delayed sentence, the person has completed all requirements of
17 probation, the person has never been convicted of a felony, and no
18 misdemeanor or felony charges or motion to revoke or accelerate the
19 sentence are pending against the person ~~and at least one (1) year~~
20 ~~has passed since the charge was dismissed;~~

21 9. The person was charged with a nonviolent felony offense not
22 listed in Section 571 of Title 57 of the Oklahoma Statutes, the
23 charge was dismissed following the successful completion of a
24 deferred judgment or delayed sentence, the person has never been

1 convicted of a felony, no misdemeanor or felony charges are pending
2 against the person and ~~at least~~ either two (2) years have passed
3 since the charge was dismissed following the successful completion
4 of a deferred judgment or delayed sentence or the charge was
5 dismissed within five (5) years ~~have passed since the charge was~~
6 ~~dismissed~~ from the date of arrest, whichever is longer;

7 10. The person was charged with a nonviolent felony offense not
8 listed in Section 571 of Title 57 of the Oklahoma Statutes, the
9 charge was dismissed following successful completion and dismissal
10 of all charges from a drug court treatment program, delayed
11 sentencing program or other treatment or diversionary program, and
12 all fines and costs have been paid;

13 11. The person was convicted of a misdemeanor offense, the
14 person was sentenced to a fine of less than Five Hundred One Dollars
15 (\$501.00) without a term of imprisonment or a suspended sentence,
16 the fine has been paid or satisfied by time served in lieu of the
17 fine, the person has not been convicted of a felony and no felony or
18 misdemeanor charges are pending against the person;

19 ~~11.~~ ~~The person was convicted of a misdemeanor offense, the~~
20 ~~person was sentenced to a term of imprisonment, a suspended sentence~~
21 ~~or a fine in an amount greater than Five Hundred Dollars (\$500.00),~~
22 ~~the person has not been convicted of a felony, no felony or~~
23 ~~misdemeanor charges are pending against the person and at least five~~
24

1 ~~(5) years have passed since the end of the last misdemeanor~~
2 ~~sentence;~~

3 12. The person was convicted of a nonviolent felony offense not
4 listed in Section 571 of Title 57 of the Oklahoma Statutes, the
5 person has not been convicted of any other felony, ~~the person has~~
6 ~~not been convicted of a separate misdemeanor in the last seven (7)~~
7 ~~years,~~ no felony or misdemeanor charges are pending against the
8 person and at least five (5) years have passed since the completion
9 of the sentence for the felony conviction;

10 13. The person was convicted of not more than two felony
11 offenses, none of which is a felony offense listed in Section 13.1
12 of Title 21 of the Oklahoma Statutes or any offense that would
13 require the person to register pursuant to the provisions of the Sex
14 Offenders Registration Act, no felony or misdemeanor charges are
15 pending against the person, and at least ten (10) years have passed
16 since the completion of the sentence for the felony conviction;

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

21 15. The person was convicted of a nonviolent felony offense not
22 listed in Section 571 of Title 57 of the Oklahoma Statutes which was
23 subsequently reclassified as a misdemeanor under Oklahoma law, the
24 person is not currently serving a sentence for a crime in this state

1 or another state, at least thirty (30) days have passed since the
2 completion or commutation of the sentence for the crime that was
3 reclassified as a misdemeanor, any restitution ordered by the court
4 to be paid by the person has been satisfied in full, and any
5 treatment program ordered by the court has been successfully
6 completed by the person, including any person who failed a treatment
7 program which resulted in an accelerated or revoked sentence that
8 has since been successfully completed by the person or the person
9 can show successful completion of a treatment program at a later
10 date. Persons seeking an expungement of records under the
11 provisions of this paragraph may utilize the expungement forms
12 provided in Section ~~2~~ 18a of this ~~act~~ title; or

13 16. The person was charged with a nonviolent felony offense not
14 listed in Section 571 of Title 57 of the Oklahoma Statutes which was
15 subsequently reclassified as a misdemeanor under Oklahoma law, the
16 charge was dismissed following the successful completion of a
17 deferred judgment or delayed sentence, the person has never been
18 convicted of a felony, no misdemeanor or felony charges are pending
19 against the person, at least thirty (30) days have passed since the
20 completion of the deferred judgment or delayed sentence for the
21 crime that was reclassified as a misdemeanor, any restitution
22 ordered by the court to be paid by the person has been satisfied in
23 full, and any treatment program ordered by the court has been
24 successfully completed by the person, including any person who

1 failed a treatment program which resulted in an accelerated sentence
2 that has since been successfully completed by the person or the
3 person can show successful completion of a treatment program at a
4 later date. Persons seeking an expungement of records under the
5 provisions of this paragraph may utilize the expungement forms
6 provided in Section 18a of this title.

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

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

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

1 of subsection A of this section may also include the sealing of
2 Pardon and Parole Board records related to an application for a
3 pardon. Such records shall be sealed to the public but not to the
4 Pardon and Parole Board.

5 SECTION 2. AMENDATORY 22 O.S. 2011, Section 19, as last
6 amended by Section 2, Chapter 348, O.S.L. 2016 (22 O.S. Supp. 2019,
7 Section 19), is amended to read as follows:

8 Section 19. A. Any person qualified under Section 18 of this
9 title may file a civil petition requesting that the district court
10 of the district in which the arrest information pertaining to the
11 person is located for the sealing of all or any part of the record,
12 except basic identification information. In the alternative, a
13 person qualified under Section 18 of this title may file a motion
14 for expungement in the underlying criminal case that is the subject
15 of the expungement request.

16 B. Upon the filing of a petition, motion, or entering of a
17 court order, the court shall set a date for a hearing and the moving
18 party shall provide thirty (30) days of notice of the hearing to the
19 prosecuting agency, the arresting agency, the Oklahoma State Bureau
20 of Investigation, and any other person or agency whom the court has
21 reason to believe may have relevant information related to the
22 sealing of such record. An agreed journal entry, signed by all
23 parties required to receive notice, may be presented to the assigned
24 judge in lieu of a hearing on the petition or motion.

1 C. Upon a finding that the harm to privacy of the person in
2 interest or dangers of unwarranted adverse consequences outweigh the
3 public interest in retaining the records, the court may order such
4 records, or any part thereof except basic identification
5 information, to be sealed. If the court finds that neither sealing
6 of the records nor maintaining of the records unsealed by the agency
7 would serve the ends of justice, the court may enter an appropriate
8 order limiting access to such records.

9 Any order entered under this subsection shall specify those
10 agencies to which such order shall apply. Any order entered
11 pursuant to this subsection may be appealed by the petitioner, the
12 prosecuting agency, the arresting agency, or the Oklahoma State
13 Bureau of Investigation to the Oklahoma Supreme Court in accordance
14 with the rules of the Oklahoma Supreme Court. In all such appeals,
15 the Oklahoma State Bureau of Investigation is a necessary party and
16 must be given notice of the appellate proceedings.

17 D. Upon the entry of an order to seal the records, or any part
18 thereof, the subject official actions shall be deemed never to have
19 occurred, and the person in interest and all criminal justice
20 agencies may properly reply, upon any inquiry in the matter, that no
21 such action ever occurred and that no such record exists with
22 respect to such person.

23 E. Inspection of the records included in the order may
24 thereafter be permitted by the court only upon petition by the

1 person in interest who is the subject of such records, the Attorney
2 General, or by the prosecuting agency and only to those persons and
3 for such purposes named in such petition.

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

15 G. All arrest and criminal records information existing prior
16 to the effective date of this section, except basic identification
17 information, is also subject to sealing in accordance with
18 subsection C of this section.

19 H. Nothing in this section shall be construed to authorize the
20 physical destruction of any criminal justice records.

21 I. For the purposes of this section, sealed materials which are
22 recorded in the same document as unsealed material may be recorded
23 in a separate document, and sealed, then obliterated in the original
24 document.

1 J. For the purposes of this section, district court index
2 reference of sealed material shall be destroyed, removed or
3 obliterated.

4 K. Any record ordered to be sealed pursuant to this section, if
5 not unsealed within ten (10) years of the expungement order, may be
6 obliterated or destroyed at the end of the ten-year period.

7 L. Subsequent to records being sealed as provided herein, the
8 prosecuting agency, the arresting agency, the Oklahoma State Bureau
9 of Investigation, or other interested person or agency may petition
10 the court for an order unsealing said records. Upon filing of a
11 petition the court shall set a date for hearing, which hearing may
12 be closed at the discretion of the court, and shall provide thirty
13 (30) days of notice to all interested parties. If, upon hearing,
14 the court determines there has been a change of conditions or that
15 there is a compelling reason to unseal the records, the court may
16 order all or a portion of the records unsealed.

17 M. Nothing herein shall prohibit the introduction of evidence
18 regarding actions sealed pursuant to the provisions of this section
19 at any hearing or trial for purposes of impeaching the credibility
20 of a witness or as evidence of character testimony pursuant to
21 Section 2608 of Title 12 of the Oklahoma Statutes.

22 N. If a person qualifies for an expungement under the
23 provisions of paragraph 3 of subsection A of Section 18 of this
24 title and said petition for expungement is granted by the court, the

1 court shall order the reimbursement of all filing fees and court
2 costs incurred by the petitioner as a result of filing the
3 expungement request.

4 SECTION 3. AMENDATORY Section 2, Chapter 243, O.S.L.
5 2015, as amended by Section 3, Chapter 128, O.S.L. 2018 (22 O.S.
6 Supp. 2019, Section 985.1), is amended to read as follows:

7 Section 985.1 A. When sentencing a person convicted of a
8 criminal offense for which there is a mandatory minimum sentence of
9 imprisonment, a prohibition against probation, or a statutory
10 restraint on placing the individual in a treatment or diversionary
11 program, the court may depart from the applicable sentence or
12 statutory restraint if the court finds substantial and compelling
13 reasons on the record, after giving due regard to the nature of the
14 crime, history, and character of the defendant and his or her
15 chances of successful rehabilitation, that:

16 1. The mandatory minimum sentence of imprisonment, prohibition
17 against probation or statutory restraint against a treatment or
18 diversionary program is not necessary for the protection of the
19 public; ~~or~~

20 2. ~~Imposition~~ and imposition of the mandatory minimum sentence
21 of imprisonment, or the rejection of a treatment or diversionary
22 program option would result in substantial injustice to the
23 defendant; or

24

1 ~~3.~~ 2. The mandatory minimum sentence of imprisonment,
2 prohibition against probation or statutory restraint against a
3 treatment or diversionary program is not necessary for the
4 protection of the public and the defendant, based on a risk and
5 needs assessment, is eligible for an alternative court, a diversion
6 program or community sentencing, without regard to exclusions
7 because of previous convictions, ~~and~~ whether or not the defendant
8 has been accepted to the same, pending sentencing. In so finding,
9 the court may place the defendant in a diversionary program or
10 alternative court without the consent of the state.

11 B. The court shall not have the discretion to depart from the
12 applicable mandatory minimum sentence of imprisonment on convictions
13 for criminal offenses under the following circumstances:

14 1. The offense for which the defendant was convicted is among
15 those crimes listed in Section 571 of Title 57 of the Oklahoma
16 Statutes as excepted from the definition of "nonviolent offense"
17 absent a finding based upon clear and convincing evidence that the
18 defendant has completed sufficient rehabilitative programs to
19 establish that the defendant does not pose a threat to society. In
20 so finding, the court may then apply the provisions provided for in
21 subsection A of this section or may, in its discretion, choose not
22 to impose the mandatory sentencing requirement provided for in
23 Section 13.1 of Title 21 of the Oklahoma Statutes;
24

1 2. The offense for which the defendant was convicted was a sex
2 offense and will require the defendant to register as a sex offender
3 pursuant to the provisions of the Sex Offenders Registration Act;

4 3. The offense for which the defendant was convicted involved
5 the use of a firearm;

6 ~~4. The offense for which the defendant was convicted is a crime
7 listed in Section 13.1 of Title 21 of the Oklahoma Statutes
8 requiring the defendant to serve not less than eighty-five percent
9 (85%) of any sentence of imprisonment imposed by the judicial system
10 prior to becoming eligible for consideration for parole;~~

11 ~~5.~~ The offense for which the defendant was convicted is a
12 violation of the Trafficking in Illegal Drugs Act as provided in
13 Sections 2-414 through 2-420 of Title 63 of the Oklahoma Statutes;

14 ~~6.~~ 5. The defendant was the leader, manager or supervisor of
15 others in a continuing criminal enterprise; or

16 ~~7.~~ 6. The offense for which the defendant was convicted is a
17 violation of the Oklahoma Antiterrorism Act as provided in Sections
18 1268 through 1268.8 of Title 21 of the Oklahoma Statutes.

19 C. Any departure from the mandatory minimum sentence as
20 authorized in this section shall not reduce the sentence to less
21 than twenty-five percent (25%) of the mandatory term.

22 D. As used in this section, the term "mandatory minimum
23 sentence of imprisonment" means:

1 1. Any mandatory minimum sentence set forth in Oklahoma
2 statutes for any crime not specifically excluded in subsection B of
3 this section; or

4 2. Any mandatory minimum term of imprisonment which the
5 defendant may be required to serve as a result of prior felony
6 convictions pursuant to subsection C of Section 991a of this title.

7 E. As used in this section, a "statutory restraint on placing
8 the individual in a treatment or diversionary program" means the
9 placement of a defendant in a program that requires the consent of
10 the state.

11 SECTION 4. AMENDATORY 22 O.S. 2011, Section 991c, as
12 last amended by Section 4, Chapter 459, O.S.L. 2019 (22 O.S. Supp.
13 2019, Section 991c), is amended to read as follows:

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

23 1. Pay court costs;

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

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

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

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

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

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

22 8. Pay into the court fund a monthly amount not exceeding Forty
23 Dollars (\$40.00) per month during any period during which the
24 proceedings are deferred when the defendant is not to be supervised

1 in the community. The total amount to be paid into the court fund
2 shall be established by the court and shall not exceed the amount of
3 the maximum fine authorized by law for the offense;

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

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

9 11. Any combination of the above provisions.

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

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

6 C. In addition to any conditions of supervision provided for in
7 subsection A of this section, the court shall, in the case of a
8 person before the court for the offense of operating or being in
9 control of a motor vehicle while the person was under the influence
10 of alcohol, other intoxicating substance, or a combination of
11 alcohol and another intoxicating substance, or who is before the
12 court for the offense of operating a motor vehicle while the ability
13 of the person to operate such vehicle was impaired due to the
14 consumption of alcohol, require the person to participate in an
15 alcohol and drug substance abuse evaluation program offered by a
16 facility or qualified practitioner certified by the Department of
17 Mental Health and Substance Abuse Services for the purpose of
18 evaluating the receptivity to treatment and prognosis of the person.
19 The court shall order the person to reimburse the facility or
20 qualified practitioner for the evaluation. The Department of Mental
21 Health and Substance Abuse Services shall establish a fee schedule,
22 based upon the ability of a person to pay, provided the fee for an
23 evaluation shall not exceed Seventy-five Dollars (\$75.00). The
24 evaluation shall be conducted at a certified facility, the office of

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

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

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

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

24

1 D. Upon completion of the conditions of the deferred judgment,
2 and upon a finding by the court that the conditions have been met
3 and all fines, fees, and monetary assessments have been paid as
4 ordered, the defendant shall be discharged without a court judgment
5 of guilt, and the court shall order the verdict or plea of guilty or
6 plea of nolo contendere to be expunged from the record and the
7 charge shall be dismissed with prejudice to any further action. The
8 judicial finding may be made upon a hearing set at the end of the
9 deferred sentence, a verified application demonstrating completion
10 of all conditions of probation, including the payment of all court-
11 ordered financial assessments, or upon the presentation of an agreed
12 order of dismissal and expungement pursuant to this subsection. The
13 procedure to expunge the record of the defendant shall be as
14 follows:

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

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

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

22 4. No information concerning the confidential file shall be
23 revealed or released, except upon written order of a judge of the
24 district court or upon written request by the named defendant to the

1 court clerk for the purpose of updating the criminal history record
2 of the defendant with the Oklahoma State Bureau of Investigation;
3 and

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

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

15 E. The provisions of subsection D of this section shall be
16 retroactive.

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

1 plea of not guilty to the petition, unless waived by both the state
2 and the defendant. Any acceleration of a deferred sentence based on
3 a technical violation shall not exceed ninety (90) days for a first
4 acceleration or five (5) years for a second or subsequent
5 acceleration.

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

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

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

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

24

1 J. All defendants who are supervised pursuant to this section
2 shall be subject to the sanction process as established in
3 subsection D of Section 991b of this title.

4 K. Notwithstanding the provisions of subsections F and G of
5 this section, a person who is being considered for an acceleration
6 of a deferred judgment for an offense where the penalty has
7 subsequently been lowered to a misdemeanor shall only be subject to
8 a judgment and sentence that would have been applicable had he or
9 she committed the offense after July 1, 2017.

10 SECTION 5. This act shall become effective November 1, 2020.

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