

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   2nd Session of the 57th Legislature (2020)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 3659

By: Kannady of the House

and

**Daniels** of the Senate

7  
8  
9                                   COMMITTEE SUBSTITUTE

10                   An Act relating to criminal procedure; amending 22  
11 O.S. 2011, Sections 18, as last amended by Section 1,  
12 Chapter 459, O.S.L. 2019 and 19, as last amended by  
13 Section 2, Chapter 348, O.S.L. 2016 (22 O.S. Supp.  
14 2019, Sections 18 and 19), which relate to the  
15 expungement of criminal arrest records; modifying  
16 certain expungement categories; adding expungement  
17 category; updating internal citations; clarifying  
18 expungement filing procedures; amending Section 2,  
19 Chapter 243, O.S.L. 2015, as amended by Section 3,  
20 Chapter 128, O.S.L. 2018 (22 O.S. Supp. 2019, Section  
21 985.1), which relates to the Justice Safety Valve  
22 Act; authorizing courts to deviate from specific  
23 statutory restraints and prohibitions on probation  
24 when sentencing a person; clarifying and deleting  
circumstances that prohibit courts from departing  
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.

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

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

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

8 1. The person has been acquitted;

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

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

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

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

24

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.

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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12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/26/2020 - DO  
13 PASS, As Amended and Coauthored.

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