HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

ENGROSSED SENATE
BILL NO. 1875 By: Ivester of the Senate

and

Nelson of the House

An Act relating to expungement of records; amending 22 O.S. 2011, Section 991c, as last amended by Section 2, Chapter 175, O.S.L. 2013 (22 O.S. Supp. 2013, Section 991c), which relates to deferred sentence; requiring sealing of certain records; providing exception; providing for admissibility of certain records for specified purposes; providing for retroactivity of certain provisions; amending 63 O.S. 2011, Section 2-410, which relates to conditional release; requiring sealing of certain records; providing exception; providing for admissibility of certain records for specified purposes; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 991c, as last amended by Section 2, Chapter 175, O.S.L. 2013 (22 O.S. Supp. 2013, Section 991c), is amended to read as follows:

Section 991c. A. Upon a verdict or plea of guilty or upon a plea of nolo contendere, but before a judgment of guilt, the court may, without entering a judgment of guilt and with the consent of

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the defendant, defer further proceedings upon the specific conditions prescribed by the court not to exceed a ten-year period. The court shall first consider restitution among the various conditions it may prescribe. The court may also consider ordering the defendant to:

1. Pay court costs;

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

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

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

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

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

7. Be supervised in the community for a period not to exceed two (2) years. As a condition of any supervision, the defendant shall be required to pay a supervision fee of Forty Dollars ($40.00) per month. The supervision fee shall be waived in whole or part by the supervisory agency when the accused is indigent. No person

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shall be denied supervision based solely on the inability of the person to pay a fee;

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

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

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

11. Any combination of the above provisions.

However, unless under the supervision of the district attorney, the offender shall be required to pay Forty Dollars ($40.00) per month to the district attorney during the first two (2) years of probation to compensate the district attorney for the costs incurred during the prosecution of the offender and for the additional work of verifying the compliance of the offender with the rules and conditions of his or her probation. The district attorney may waive any part of this requirement in the best interests of justice. The court shall not waive, suspend, defer or dismiss the costs of prosecution in its entirety. However, if the court determines that

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a reduction in the fine, costs and costs of prosecution is warranted, the court shall equally apply the same percentage reduction to the fine, costs and costs of prosecution owed by the offender.

B. In addition to any conditions of supervision provided for in subsection A of this section, the court shall, in the case of a person before the court for the offense of operating or being in control of a motor vehicle while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol and another intoxicating substance, or who is before the court for the offense of operating a motor vehicle while the ability of the person to operate such vehicle was impaired due to the consumption of alcohol, require the person to participate in an alcohol and drug substance abuse evaluation program offered by a facility or qualified practitioner certified by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the facility or qualified practitioner for the evaluation. The Department of Mental Health and Substance Abuse Services shall establish a fee schedule, based upon the ability of a person to pay, provided the fee for an evaluation shall not exceed Seventy-five Dollars ($75.00). The evaluation shall be conducted at a certified facility, the office of a qualified practitioner or at another location as ordered by the

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court. The facility or qualified practitioner shall, within seventy-two (72) hours from the time the person is assessed, submit a written report to the court for the purpose of assisting the court in its determination of conditions for deferred sentence. No person, agency or facility operating an alcohol and drug substance abuse evaluation program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated pursuant to this subsection for any treatment program or alcohol and drug substance abuse service in which the person, agency or facility has a vested interest; however, this provision shall not be construed to prohibit the court from ordering participation in or any person from voluntarily utilizing a treatment program or alcohol and drug substance abuse service offered by such person, agency or facility. Any evaluation report submitted to the court pursuant to this subsection shall be handled in a manner which will keep the report confidential from review by the general public. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence in the event the defendant fails or refuses to comply with an order of the court to obtain the evaluation required by this subsection. As used in this subsection, "qualified practitioner" means a person with at least a bachelor's degree in substance abuse treatment, mental health or a related health care field and at least two (2) years of experience in providing alcohol abuse treatment, other drug

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

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

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

C. Upon completion of the conditions of the deferred judgment, and upon a finding by the court that the conditions have been met

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and all fines, fees, and monetary assessments have been paid as ordered, the defendant shall be discharged without a court judgment of guilt, and the court shall order the verdict or plea of guilty or plea of nolo contendere to be expunged from the record and the charge shall be dismissed with prejudice to any further action. The procedure to expunge the record of the defendant shall be as follows:

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

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

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

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

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

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

D. ~~Upon order of the court, the~~ The provisions of subsection C of this section shall be retroactive.

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

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

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

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

H. Defendants who are supervised by the Department of Corrections pursuant to this section shall be subject to the intermediate sanction process as established in subsection B of Section 991b of this title.

SECTION 2. AMENDATORY 63 O.S. 2011, Section 2-410, is amended to read as follows:

Section 2-410. A. Whenever any person who has not previously been convicted of any offense under this act or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty or nolo contendere to or is found guilty of a violation of the Uniform Controlled Dangerous Substances Act, the court may, unless otherwise prohibited by law, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place the person on probation upon such reasonable terms and conditions as it may require including the requirement that such person cooperate in a treatment and rehabilitation program of a state-supported or state-approved facility, if available. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon

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fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this section may occur only once with respect to any person.

B. Any expunged arrest or conviction shall not thereafter be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire or any other public or private purpose; provided, that, any plea of guilty or nolo contendere or finding of guilt to a violation of the Uniform Controlled Dangerous Substances Act shall constitute a conviction of the offense for the purpose of the Uniform Controlled Dangerous Substances Act or any other criminal statute under which the existence of a prior conviction is relevant for a period of ten (10) years following the completion of any court imposed probationary term; provided, the person has not, in the meantime, been convicted of a misdemeanor involving moral turpitude or a felony. <u>Records expunged pursuant to this section shall be sealed to the public but not to law enforcement agencies for law enforcement purposes. Records expunged pursuant to this section shall be admissible in any subsequent criminal prosecution to prove</u>

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the existence of a prior conviction or prior deferred judgment without the necessity of a court order requesting the unsealing of such records.

C. The provisions of this section shall not apply to any person who pleads guilty or nolo contendere to or is found guilty of a violation of the Trafficking in Illegal Drugs Act or the Drug Money Laundering and Wire Transmitter Act.

SECTION 3. This act shall become effective November 1, 2014.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/02/2014 - DO PASS.

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