

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. 3790

By: Phillips

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8 COMMITTEE SUBSTITUTE

9 An Act relating to criminal procedure; amending 22
10 O.S. 2011, Section 991b, as last amended by Section
11 3, Chapter 459, O.S.L. 2019 (22 O.S. Supp. 2019,
12 Section 991b), which relates to revocation of
suspended sentences; prohibiting revocation of
sentence under certain circumstances; providing
exceptions; and providing an effective date.

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

16 SECTION 1. AMENDATORY 22 O.S. 2011, Section 991b, as
17 last amended by Section 3, Chapter 459, O.S.L. 2019 (22 O.S. Supp.
18 2019, 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.

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

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

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

- 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 H. Whenever a sentence has been suspended by the court after
4 conviction of a person for any crime, the suspended sentence of the
5 person may not be revoked, in whole or part, for using or possessing
6 medical marijuana pursuant to a valid medical marijuana patient
7 license issued under the provisions of Section 420 of Title 63 of
8 the Oklahoma Statutes unless:

9 1. The sentencing court previously found that, based on
10 material evidence, prohibiting the otherwise lawful use and
11 possession of medical marijuana is necessary and appropriate to
12 accomplish the goals of sentencing; or

13 2. The person was convicted of driving or being in actual
14 physical control of a motor vehicle while under the influence of
15 marijuana or convicted of operating a motor vehicle while impaired
16 by the use of marijuana.

17 SECTION 2. This act shall become effective November 1, 2020.

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19 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 02/27/2020 -
20 DO PASS, As Amended.