

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 357

By: Bice

6 AS INTRODUCED

7 An Act relating to modification of sentences;  
8 amending 22 O.S. 2011, Sections 982a, 991b and 991c,  
9 as last amended by Sections 1, 11 and 12, Chapter  
10 128, O.S.L. 2018 (22 O.S. Supp. 2018, Sections 982a,  
11 991b and 991c), which relate to judicial review,  
12 suspended and deferred sentences; requiring  
13 resentencing of persons convicted of certain  
14 offenses; establishing procedures for certain  
15 resentencing; establishing time limitation for  
16 certain resentencing upon application; requiring  
17 modification of certain court and law enforcement  
18 records; allowing appeal of certain judgment;  
19 requiring Department of Corrections to compile and  
20 distribute certain report; specifying information for  
21 inclusion in certain report; requiring notice of  
22 right for application for sentence modification to  
23 certain offenders; providing for termination of  
24 certain provisions; modifying procedures for certain  
proceedings; providing for codification; and  
providing an effective date.

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

20 SECTION 1. AMENDATORY 22 O.S. 2011, Section 982a, as  
21 last amended by Section 1, Chapter 128, O.S.L. 2018 (22 O.S. Supp.  
22 2018, Section 982a), is amended to read as follows:

23 Section 982a. A. 1. Any time within sixty (60) months after  
24 the initial sentence is imposed or within sixty (60) months after

1 probation has been revoked, the court imposing sentence or  
2 revocation of probation may modify such sentence or revocation by  
3 directing that another sentence be imposed, if the court is  
4 satisfied that the best interests of the public will not be  
5 jeopardized; provided, however, the court shall not impose a  
6 deferred sentence. Any application for sentence modification that  
7 is filed and ruled upon beyond twelve (12) months of the initial  
8 sentence being imposed must be approved by the district attorney who  
9 shall provide written notice to any victims in the case which is  
10 being considered for modification.

11 2. The court imposing sentence may modify the sentence of any  
12 offender who was originally sentenced for a drug charge and ordered  
13 to complete the Drug Offender Work Camp at the Bill Johnson  
14 Correctional Facility and direct that another sentence be imposed,  
15 if the court is satisfied that the best interests of the public will  
16 not be jeopardized; provided, however, the court shall not impose a  
17 deferred sentence. An application for sentence modification  
18 pursuant to this paragraph may be filed and ruled upon beyond the  
19 initial sixty-month time period provided for in paragraph 1 of this  
20 subsection.

21 3. This section shall not apply to convicted felons who have  
22 been in confinement in any state or federal prison system for any  
23 previous felony conviction during the ten-year period preceding the  
24 date that the sentence this section applies to was imposed.

1 Further, without the consent of the district attorney, this section  
2 shall not apply to sentences imposed pursuant to a plea agreement or  
3 jury verdict.

4 B. The court imposing the sentence may modify the sentence of  
5 any offender sentenced to life without parole for an offense other  
6 than a violent crime, as enumerated in Section 571 of Title 57 of  
7 the Oklahoma Statutes, who has served at least ten (10) years of the  
8 sentence in the custody of the Department of Corrections upon a  
9 finding that the best interests of the public will not be  
10 jeopardized. Provided; however, prior to granting a sentence  
11 modification under the provisions of this subsection, the court  
12 shall provide notice of the hearing to determine sentence  
13 modification to the victim or representative of the victim and shall  
14 allow the victim or representative of the victim the opportunity to  
15 provide testimony at the hearing. The court shall consider the  
16 testimony of the victim or representative of the victim when  
17 rendering a decision to modify the sentence of an offender.

18 C. For purposes of judicial review, upon court order or written  
19 request from the sentencing judge, the Department of Corrections  
20 shall provide the court imposing sentence or revocation of probation  
21 with a report to include a summary of the assessed needs of the  
22 offender, any progress made by the offender in addressing his or her  
23 assessed needs, and any other information the Department can supply  
24 on the offender. The court shall consider such reports when

1 modifying the sentence or revocation of probation. The court shall  
2 allow the Department of Corrections at least twenty (20) days after  
3 receipt of a request or order from the court to prepare the required  
4 reports.

5 D. If the court considers modification of the sentence or  
6 revocation of probation, a hearing shall be made in open court after  
7 receipt of the reports required in subsection C of this section.  
8 The clerk of the court imposing sentence or revocation of probation  
9 shall give notice of the judicial review hearing to the Department  
10 of Corrections, the offender, the legal counsel of the offender, and  
11 the district attorney of the county in which the offender was  
12 convicted upon receipt of the reports. Such notice shall be mailed  
13 at least twenty-one (21) days prior to the hearing date and shall  
14 include a copy of the report and any other written information to be  
15 considered at the judicial review hearing.

16 E. If an appeal is taken from the original sentence or from a  
17 revocation of probation which results in a modification of the  
18 sentence or modification to the revocation of probation of the  
19 offender, such sentence may be further modified in the manner  
20 described in paragraph 1 of subsection A of this section within  
21 sixty (60) months after the receipt by the clerk of the district  
22 court of the mandate from the Supreme Court or the Court of Criminal  
23 Appeals.

1 F. 1. Notwithstanding subsections A, C and D of this section,  
2 the court shall set aside the judgment and sentence and resentence a  
3 person convicted pursuant to Section 2-402 of Title 63 of the  
4 Oklahoma Statutes, whether by trial or plea, upon a finding that the  
5 person, if such person committed the same crime on or after July 1,  
6 2017, would have been guilty of a misdemeanor, and who is a person:

7 a. enumerated by the Department of Corrections pursuant  
8 to Section 2 of this act who is currently serving a  
9 sentence of imprisonment,

10 b. considered for a revocation of a suspended sentence  
11 pursuant to subsection G of Section 991b of this  
12 title, or

13 c. considered for an acceleration of a deferred sentence  
14 pursuant to subsection K of Section 991c of this  
15 title.

16 2. A hearing shall not be conducted to modify a sentence  
17 pursuant to this subsection unless requested by the person.

18 If the person's sentence includes multiple felony convictions,  
19 one or more of which were reduced to misdemeanors pursuant to this  
20 subsection, the court shall reduce the sentence to the length it  
21 would have been if the violation of Section 2-402 of Title 63 of the  
22 Oklahoma Statutes was committed on or after July 1, 2017.

23 The court shall resentence each person set forth in subparagraph  
24 a of paragraph 1 of this subsection within three (3) months of

1 receipt of the report pursuant to Section 2 of this act. The court  
2 shall resentence each person set forth in subparagraphs b and c of  
3 paragraph 1 of this subsection within six (6) months of referral.

4 A person whose sentence is modified pursuant to this subsection  
5 shall be given credit for time served. In no event may a resentence  
6 under this subsection result in the imposition of a term longer than  
7 the original sentence.

8 3. A sentence for Section 2-402 of Title 63 of the Oklahoma  
9 Statutes that is modified pursuant to this subsection shall be  
10 considered a misdemeanor for all purposes. Upon a sentence  
11 modification pursuant to this subsection, the court shall order all  
12 applicable court and law enforcement records relating to the  
13 person's felony conviction pursuant to Section 2-402 of Title 63 of  
14 the Oklahoma Statutes to be modified to reflect the new sentence.

15 4. A final judgment entered under this subsection may be  
16 appealed to the Court of Criminal Appeals within thirty (30) days  
17 from the entry of the judgment.

18 SECTION 2. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 983c of Title 22, unless there  
20 is created a duplication in numbering, reads as follows:

21 The Director of the Department of Corrections shall compile and  
22 distribute a report on or before August 1, 2019, and every three (3)  
23 months thereafter, to each presiding judge for each district court  
24 from which any person has been sentenced and is currently serving a

1 sentence of imprisonment, including revocation and acceleration  
2 sentences, for a conviction pursuant to Section 2-402 of Title 63 of  
3 Oklahoma Statutes, who committed his or her offense prior to July 1,  
4 2017, and has three (3) months or more remaining until his or her  
5 expected release date. Such report shall include persons currently  
6 serving a sentence of imprisonment for multiple offenses, served  
7 concurrently or consecutively, one or more of which is for a  
8 conviction pursuant to Section 2-402 of Title 63 of the Oklahoma  
9 Statutes. Such report shall include the county from which a person  
10 was sentenced, the court-imposed sentence, including sentences for  
11 other offenses served concurrently or consecutively, and the  
12 expected remaining stay in prison. Copies of the reports shall be  
13 made available to the public upon request. The Department shall  
14 notify any person serving a sentence of imprisonment for a  
15 conviction pursuant to Section 2-402 of Title 63 of the Oklahoma  
16 Statutes who committed his or her offense prior to July 1, 2017, who  
17 has three (3) months or less remaining until the expected release  
18 date, that he or she has the right to apply for sentence  
19 modification for a conviction pursuant to Section 2-402 of Title 63  
20 of the Oklahoma Statutes.

21 This section shall terminate on August 1st, 2024.

22 SECTION 3. AMENDATORY 22 O.S. 2011, Section 991b, as  
23 last amended by Section 11, Chapter 128, O.S.L. 2018 (22 O.S. Supp.  
24 2018, Section 991b), is amended to read as follows:

1       Section 991b. A. Whenever a sentence has been suspended by the  
2 court after conviction of a person for any crime, the suspended  
3 sentence of the person may not be revoked, in whole or part, for any  
4 cause unless a petition setting forth the grounds for such  
5 revocation is filed by the district attorney with the clerk of the  
6 sentencing court and competent evidence justifying the revocation of  
7 the suspended sentence is presented to the court at a hearing to be  
8 held for that purpose within twenty (20) days after the entry of the  
9 plea of not guilty to the petition, unless waived by both the state  
10 and the defendant. The State of Oklahoma may dismiss the petition  
11 without prejudice one time upon good cause shown to the court,  
12 provided that any successor petition must be filed within forty-five  
13 (45) days of the date of the dismissal of the petition.

14       B. Whenever a sentence has been suspended by the court after  
15 conviction of a person for any crime, the suspended sentence of the  
16 person may not be revoked in whole for a technical violation unless  
17 a petition setting forth the grounds for such revocation is filed by  
18 the district attorney with the clerk of the sentencing court and  
19 competent evidence justifying the revocation of the suspended  
20 sentence is presented to the court at a hearing to be held for that  
21 purpose within twenty (20) days after the entry of the plea of not  
22 guilty to the petition, unless waived by both the state and the  
23 defendant. The State of Oklahoma may dismiss the petition without  
24 prejudice one time upon good cause shown to the court, provided that



1 any successor petition must be filed within forty-five (45) days of  
2 the date of the dismissal of the petition. Any revocation of a  
3 suspended sentence based on a technical violation shall not exceed  
4 six (6) months for a first revocation and five (5) years for a  
5 second or subsequent revocation.

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

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

21 D. 1. The Department of Corrections shall develop a matrix of  
22 technical violations and sanctions to address violations committed  
23 by persons who are being supervised by the Department. The  
24 Department shall be authorized to use a violation response and

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

1 provision. The Department of Corrections shall establish procedures  
2 to hear responses to technical violations and review sanction plans  
3 including the following:

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

16 2. The hearing officer shall determine based on a preponderance  
17 of the evidence whether a technical violation occurred. Upon a  
18 finding that a technical violation occurred, the hearing officer may  
19 order the offender to participate in the recommended sanction plan  
20 or may modify the plan. Offenders who accept the sanction plan  
21 shall sign a violation response sanction form, and the hearing  
22 officer shall then impose the sanction. Failure of the offender to  
23 comply with the imposed sanction plan shall constitute a violation  
24 of the rules and conditions of supervision that may result in a

1 revocation proceeding. If an offender does not voluntarily accept  
2 the recommended sanction plan, the Department shall either impose  
3 the sanction and allow the offender to appeal to the district court,  
4 or request a revocation proceeding as provided by law. Every  
5 administrative hearing and sanction imposed by the Department shall  
6 be appealable to the district court.

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

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

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

21 3. At the hearing, if one of the grounds for the petition for  
22 revocation is the failure of the defendant to make timely  
23 restitution as ordered by the court, the court will hear evidence  
24 and if it appears to the satisfaction of the court from such

1 evidence that the terms of the order of restitution create a  
2 manifest hardship on the defendant or the immediate family of the  
3 defendant, the court may cancel all or any part of the amount still  
4 due, or modify the terms or method of payment. Provided, if the  
5 court determines that a reduction in the restitution still due is  
6 warranted, the court shall equally apply the same percentage  
7 reduction to any court-ordered monetary obligation owed by the  
8 defendant including, but not limited to, fines, court costs and  
9 costs of incarceration.

10 F. The court may revoke a portion of the sentence and leave the  
11 remaining part not revoked, but suspended for the remainder of the  
12 term of the sentence, and under the provisions applying to it. The  
13 person whose suspended sentence is being considered for revocation  
14 at the hearing shall have the right to be represented by counsel, to  
15 present competent evidence in his or her own behalf and to be  
16 confronted by the witnesses against the defendant. Any order of the  
17 court revoking the suspended sentence, in whole or in part, shall be  
18 subject to review on appeal, as in other appeals of criminal cases.  
19 Provided, however, that if the crime for which the suspended  
20 sentence is given was a felony, the defendant may be allowed bail  
21 pending appeal. If the reason for revocation be that the defendant  
22 committed a felony, the defendant shall not be allowed bail pending  
23 appeal.  
24

1        G. Notwithstanding subsections A and B of this section, in any  
2 proceeding under this section for a person whose suspended sentence  
3 was for a violation of Section 2-402 of Title 63 of the Oklahoma  
4 Statutes and was entered prior to July 1, 2017, the person shall  
5 have his or her underlying judgment and sentence for the violation  
6 of Section 2-402 of Title 63 of the Oklahoma Statutes set aside by  
7 the court shall be resentenced pursuant to subsection F of Section  
8 982a of this title.

9        SECTION 4.        AMENDATORY        22 O.S. 2011, Section 991c, as  
10 last amended by Section 12, Chapter 128, O.S.L. 2018 (22 O.S. Supp.  
11 2018, Section 991c), is amended to read as follows:

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

- 21        1. Pay court costs;
- 22        2. Pay an assessment in lieu of any fine authorized by law for  
23 the offense;
- 24        3. Pay any other assessment or cost authorized by law;

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

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

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

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

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

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

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

6        11. Any combination of the above provisions.

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

21        B. When the court has ordered restitution as a condition of  
22 supervision as provided for in subsection A of this section and that  
23 condition has not been satisfied, the court may, at any time prior  
24



1 to the termination or expiration of the supervision period, order an  
2 extension of supervision for a period not to exceed three (3) years.

3 C. In addition to any conditions of supervision provided for in  
4 subsection A of this section, the court shall, in the case of a  
5 person before the court for the offense of operating or being in  
6 control of a motor vehicle while the person was under the influence  
7 of alcohol, other intoxicating substance, or a combination of  
8 alcohol and another intoxicating substance, or who is before the  
9 court for the offense of operating a motor vehicle while the ability  
10 of the person to operate such vehicle was impaired due to the  
11 consumption of alcohol, require the person to participate in an  
12 alcohol and drug substance abuse evaluation program offered by a  
13 facility or qualified practitioner certified by the Department of  
14 Mental Health and Substance Abuse Services for the purpose of  
15 evaluating the receptivity to treatment and prognosis of the person.  
16 The court shall order the person to reimburse the facility or  
17 qualified practitioner for the evaluation. The Department of Mental  
18 Health and Substance Abuse Services shall establish a fee schedule,  
19 based upon the ability of a person to pay, provided the fee for an  
20 evaluation shall not exceed Seventy-five Dollars (\$75.00). The  
21 evaluation shall be conducted at a certified facility, the office of  
22 a qualified practitioner or at another location as ordered by the  
23 court. The facility or qualified practitioner shall, within  
24 seventy-two (72) hours from the time the person is assessed, submit

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

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

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

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

21 D. Upon completion of the conditions of the deferred judgment,  
22 and upon a finding by the court that the conditions have been met  
23 and all fines, fees, and monetary assessments have been paid as  
24 ordered, the defendant shall be discharged without a court judgment

1 of guilt, and the court shall order the verdict or plea of guilty or  
2 plea of nolo contendere to be expunged from the record and the  
3 charge shall be dismissed with prejudice to any further action. The  
4 procedure to expunge the record of the defendant shall be as  
5 follows:

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

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

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

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

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

23 Records expunged pursuant to this subsection shall be sealed to  
24 the public but not to law enforcement agencies for law enforcement  
25

1 purposes. Records expunged pursuant to this subsection shall be  
2 admissible in any subsequent criminal prosecution to prove the  
3 existence of a prior conviction or prior deferred judgment without  
4 the necessity of a court order requesting the unsealing of such  
5 records.

6 E. The provisions of subsection D of this section shall be  
7 retroactive.

8 F. Whenever a judgment has been deferred by the court according  
9 to the provisions of this section, deferred judgment may not be  
10 accelerated for any technical violation unless a petition setting  
11 forth the grounds for such acceleration is filed by the district  
12 attorney with the clerk of the sentencing court and competent  
13 evidence justifying the acceleration of the judgment is presented to  
14 the court at a hearing to be held for that purpose. The hearing  
15 shall be held not more than twenty (20) days after the entry of the  
16 plea of not guilty to the petition, unless waived by both the state  
17 and the defendant. Any acceleration of a deferred sentence based on  
18 a technical violation shall not exceed ninety (90) days for a first  
19 acceleration or five (5) years for a second or subsequent  
20 acceleration.

21 G. Upon any violation of the deferred judgment, other than a  
22 technical violation, the court may enter a judgment of guilt and  
23 proceed as provided in Section 991a of this title or may modify any  
24 condition imposed. Provided, however, if the deferred judgment is  
25

1 for a felony offense, and the defendant commits another felony  
2 offense, the defendant shall not be allowed bail pending appeal.

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

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

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

15 J. All defendants who are supervised pursuant to this section  
16 shall be subject to the sanction process as established in  
17 subsection B of Section 991b of this title.

18 K. Notwithstanding subsections F and G of this section, in any  
19 proceeding under this section for a person whose deferred sentence  
20 was for a violation of Section 2-402 of Title 63 of the Oklahoma  
21 Statutes and was entered prior to July 1, 2017, the person shall  
22 have his or her underlying judgment and sentence for the violation  
23 of Section 2-402 of Title 63 of the Oklahoma Statutes set aside by  
24

1 the court and shall be resentenced pursuant to subsection F of  
2 Section 982a of this title.

3 SECTION 5. This act shall become effective November 1, 2019.  
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