1 ENGROSSED SENATE
   BILL NO. 25   By: Daniels and Boren of the
2   Senate

3   and

4   Kannady of the House

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7   An Act relating to sentencing proceedings; amending
           22 O.S. 2011, Section 929, which relates to new
8   sentencing proceedings; modifying eligibility
           requirements for jury resentencing; authorizing
9   waiver of certain resentencing; requiring
           reinstatement of sentence upon certain waiver;
10   prohibiting appeal of reinstated sentence;
           authorizing certain testimony; deleting retroactive
11   applicability of certain provisions; updating
           statutory references; and providing an effective
12   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 929, is

17 amended to read as follows:

18   Section 929. A. Upon any appeal of a conviction by the

19 defendant in a noncapital criminal case, the appellate court, if it

20 finds prejudicial error in the sentencing proceeding only, may set

21 aside the sentence rendered and remand the case to the trial court

22 in the jurisdiction in which the defendant was originally sentenced

23 for resentencing. No error in the sentencing proceeding shall

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result in the reversal of the conviction in a criminal case unless

the error directly affected the determination of guilt.

B.   When a criminal case is remanded for vacation of a sentence,

the court ~~may~~ shall:

1.   Set the case for a nonjury sentencing proceeding; or

2.   If the defendant ~~or the prosecutor so requests in writing~~

was originally sentenced by a jury, impanel a new sentencing jury

unless jury resentencing is waived by the defendant and the

prosecutor.

C.   ~~If a written request for a jury trial is filed within twenty~~

~~(20) days of the date of the appellate court order, the trial court~~

~~shall impanel a new jury for the purpose of conducting a new~~

~~sentencing proceeding.~~

~~1.~~   The defendant may affirmatively waive resentencing before

the appropriate trial court within ninety (90) days of the appellate

court order remanding for resentencing; provided, however, the

defendant may not waive resentencing after the commencement of the

resentencing hearing or trial. The defendant may not waive

resentencing on an appeal or petition for a writ of extraordinary

relief sought by the prosecution or if the original sentence was

unlawful. If the defendant affirmatively waives resentencing

pursuant to this subsection, the original sentence shall be

reinstated by the trial court. A sentence reinstated pursuant to

this subsection shall not be appealable by the defendant.

1   D. All exhibits and a transcript of all testimony and other

2 evidence properly admitted in the prior trial and sentencing shall

3 be admissible in the new sentencing proceeding. The defendant may

4 testify at his or her resentencing proceeding in accordance with the

5 requirements of the Oklahoma Evidence Code. Additional relevant

6 evidence may be admitted including testimony of witnesses who

7 testified at the previous trial.

8 ~~2. The provisions of this section are procedural and shall~~

9 ~~apply retroactively to any defendant sentenced in this state.~~

10 ~~D.~~ E. This section shall not be construed to amend or be in

11 conflict with the provisions of Section 701.10 or 701.10a of Title

12 21 of the Oklahoma Statutes relating to sentencing and resentencing

13 in death penalty cases; Section ~~438~~ 860.1 of this ~~act~~ title relating

14 to the trial procedure for defendants prosecuted for second or

15 subsequent offense; or the provisions of Sections ~~439~~ 926.1 and ~~440~~

16 927.1 of this ~~act~~ title relating to assessment of punishment in the

17 original trial proceedings.

18   SECTION 2. This act shall become effective November 1, 2021.

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1   Passed the Senate the 11th day of February, 2021.

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                                    _____
                                    Presiding Officer of the Senate
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5   Passed the House of Representatives the ____ day of _____,

6   2021.

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                                    _____
                                    Presiding Officer of the House
9   of Representatives

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