

An Act

ENROLLED HOUSE
BILL NO. 1269

By: Dunnington, Echols, West
(Josh), Provenzano, Sims,
Fugate and Goodwin of the
House

and

Bice, Young, Ikley-Freeman
and Matthews of the Senate

An Act relating to the expungement of criminal records and commutations; amending 22 O.S. 2011, Section 18, as last amended by Section 1 of Enrolled Senate Bill No. 815 of the 1st Session of the 57th Oklahoma Legislature (22 O.S. Supp. 2018, Section 18), which relates to the expungement of criminal records; authorizing certain persons to file petition for expungement of criminal records; updating internal citation; providing statutory forms for petition to expunge records; amending 22 O.S. 2011, Section 991b, as last amended by Section 11, Chapter 128, O.S.L. 2018 (22 O.S. Supp. 2018, Section 991b), which relates to revocation of suspended sentences; updating language; providing for modification of sentences under certain circumstances; amending 22 O.S. 2011, Section 991c, as last amended by Section 12, Chapter 128, O.S.L. 2018 (22 O.S. Supp. 2018, Section 991c), which relates to deferred sentences; providing for modification of judgment and sentences for certain persons considered for acceleration; amending 57 O.S. 2011, Section 332.2, as last amended by Section 1, Chapter 117, O.S.L. 2018 (57 O.S. Supp. 2018, Section 332.2), which relates to procedures for applications for commutations and pardons; directing the Pardon and Parole Board to establish specialized commutation docket for certain eligible applicants; empowering the Board to recommend commutations to the Governor; directing the Department of Corrections to certify list of potentially eligible inmates to the

Board by certain date; providing for codification;
and providing an effective date.

SUBJECT: Criminal procedure

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 18, as last amended by Section 1 of Enrolled Senate Bill No. 815 of the 1st Session of the 57th Oklahoma Legislature (22 O.S. Supp. 2018, Section 18), is amended to read as follows:

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

1. The person has been acquitted;
2. The conviction was reversed with instructions to dismiss by an appellate court of competent jurisdiction, or an appellate court of competent jurisdiction reversed the conviction and the prosecuting agency subsequently dismissed the charge;
3. The factual innocence of the person was established by the use of deoxyribonucleic acid (DNA) evidence subsequent to conviction, including a person who has been released from prison at the time innocence was established;
4. The person has received a full pardon by the Governor for the crime for which the person was sentenced;
5. The person was arrested and no charges of any type, including charges for an offense different than that for which the person was originally arrested, are filed and the statute of limitations has expired or the prosecuting agency has declined to file charges;
6. The person was under eighteen (18) years of age at the time the offense was committed and the person has received a full pardon for the offense;

7. The person was charged with one or more misdemeanor or felony crimes, all charges have been dismissed, the person has never been convicted of a felony, no misdemeanor or felony charges are pending against the person and the statute of limitations for refiling the charge or charges has expired or the prosecuting agency confirms that the charge or charges will not be refiled; provided, however, this category shall not apply to charges that have been dismissed following the completion of a deferred judgment or delayed sentence;

8. The person was charged with a misdemeanor, the charge was dismissed following the successful completion of a deferred judgment or delayed sentence, the person has never been convicted of a felony, no misdemeanor or felony charges are pending against the person and at least one (1) year has passed since the charge was dismissed;

9. The person was charged with a nonviolent felony offense not listed in Section 571 of Title 57 of the Oklahoma Statutes, the charge was dismissed following the successful completion of a deferred judgment or delayed sentence, the person has never been convicted of a felony, no misdemeanor or felony charges are pending against the person and at least five (5) years have passed since the charge was dismissed;

10. The person was convicted of a misdemeanor offense, the person was sentenced to a fine of less than Five Hundred One Dollars (\$501.00) without a term of imprisonment or a suspended sentence, the fine has been paid or satisfied by time served in lieu of the fine, the person has not been convicted of a felony and no felony or misdemeanor charges are pending against the person;

11. The person was convicted of a misdemeanor offense, the person was sentenced to a term of imprisonment, a suspended sentence or a fine in an amount greater than Five Hundred Dollars (\$500.00), the person has not been convicted of a felony, no felony or misdemeanor charges are pending against the person and at least five (5) years have passed since the end of the last misdemeanor sentence;

12. The person was convicted of a nonviolent felony offense not listed in Section 571 of Title 57 of the Oklahoma Statutes, the person has not been convicted of any other felony, the person has not been convicted of a separate misdemeanor in the last seven (7) years, no felony or misdemeanor charges are pending against the

person and at least five (5) years have passed since the completion of the sentence for the felony conviction;

13. The person was convicted of not more than two felony offenses, none of which is a felony offense listed in Section 13.1 of Title 21 of the Oklahoma Statutes or any offense that would require the person to register pursuant to the provisions of the Sex Offenders Registration Act, no felony or misdemeanor charges are pending against the person, and at least ten (10) years have passed since the completion of the sentence for the felony conviction; ~~or~~

14. The person has been charged or arrested or is the subject of an arrest warrant for a crime that was committed by another person who has appropriated or used the person's name or other identification without the person's consent or authorization; or

15. The person was convicted of a nonviolent felony offense not listed in Section 571 of Title 57 of the Oklahoma Statutes which was subsequently reclassified as a misdemeanor under Oklahoma law, the person is not currently serving a sentence for a crime in this state or another state, at least thirty (30) days have passed since the completion or commutation of the sentence for the crime that was reclassified as a misdemeanor, any restitution ordered by the court to be paid by the person has been satisfied in full, and any treatment program ordered by the court has been successfully completed by the person, including any person who failed a treatment program which resulted in an accelerated or revoked sentence that has since been successfully completed by the person or the person can show successful completion of a treatment program at a later date. Persons seeking an expungement of records under the provisions of this paragraph may utilize the expungement forms provided in Section 2 of this act.

B. For purposes of Section 18 et seq. of this title, "expungement" shall mean the sealing of criminal records, as well as any public civil record, involving actions brought by and against the State of Oklahoma arising from the same arrest, transaction or occurrence.

C. For purposes of seeking an expungement under the provisions of paragraph 10, 11, 12 or 13 of subsection A of this section, offenses arising out of the same transaction or occurrence shall be treated as one conviction and offense.

CRIMINAL CASE INFORMATION:

Name and Address of Arresting Agency:

Date of Arrest:

Name and Address of Other Agency:

(List any state or local government agency that has a record of your case.)

Case Number to be Expunged: _____

Charge to be Expunged: _____

* Information on your criminal case may be found at www.oscn.net.

I, the above-named Petitioner, hereby petition this Court for an expungement of criminal records pursuant to paragraph 15 of subsection A of Section 18 of Title 22 of the Oklahoma Statutes and certify as follows:

1. In this court of the county named above, I was charged and convicted of a nonviolent felony offense not listed in Section 571 of Title 57 of the Oklahoma Statutes;

2. That the nonviolent felony offense I was charged and convicted of has been reclassified as a misdemeanor offense under Oklahoma law;

3. That I am not currently serving a sentence for a crime in this state or another state;

4. At least thirty (30) days have passed since either the completion of my sentence or the commutation of my sentence for the crime that was reclassified as a misdemeanor;

5. That all restitution (if any) ordered by the court to be paid by me in this case has been satisfied in full;

6. That I have successfully completed any and all treatment program(s) ordered by the court, successfully completed an accelerated or revoked sentence or successfully completed a treatment program at a later date; and

7. That the harm to the Petitioner's privacy or danger of unwarranted adverse consequences outweighs the public's interest in retaining said records.

I declare under penalty of perjury that the statements made herein are true and correct to the best of my knowledge, information and belief.

Date

Signature of Petitioner

Name (Print): _____

IN THE DISTRICT COURT OF _____ COUNTY

STATE OF OKLAHOMA

_____,)

)

Petitioner,)

)

vs.)

Case No. _____

)

_____)

)
)
)
THE STATE OF OKLAHOMA,)
)
)
)
)
Respondent.)

ORDER TO EXPUNGE RECORDS

PURSUANT TO TITLE 22 O.S. SECTIONS 18 AND 19

NOW on this _____ day of _____,
20_____, after consideration of the Petition to Expunge Records
Pursuant to Title 22 O.S. Sections 18 and 19, presented by _____
_____, it is so ORDERED that:

[] The Petition is hereby GRANTED. The Petitioner qualifies for an expungement of records pursuant to paragraph 15 of subsection A of Section 18 of Title 22 of the Oklahoma Statutes. The Court finds that the harm to the Petitioner's privacy or danger of unwarranted adverse consequences outweighs the public's interest in retaining said records. The Court further finds that the law enforcement agencies listed in the Petition to Expunge Records shall seal all of the court, arrest and criminal history records of the Petitioner pursuant to the provisions of Section 19 of Title 22 of the Oklahoma Statutes. Upon the entry of this order to seal the records, or any part thereof, the subject official actions shall be deemed never to have occurred, and the person in interest and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to such person. Inspection of the records included

in the order may thereafter be permitted by the court only upon petition by the person in interest who is the subject of such records, the Attorney General, or by the district attorney and only to those persons and for such purposes named in such petition. Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or otherwise, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records, provide information that has been sealed, including any reference to or information concerning such sealed information, and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.

[] The Petition is hereby DENIED.

IT IS SO ORDERED.

JUDGE OF THE DISTRICT COURT

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

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

B. Whenever a sentence has been suspended by the court after conviction of a person for any crime, the suspended sentence of the

person may not be revoked in whole for a technical violation unless a petition setting forth the grounds for such revocation is filed by the district attorney with the clerk of the sentencing court and competent evidence justifying the revocation of the suspended sentence is presented to the court at a hearing to be held for that purpose within twenty (20) days after the entry of the plea of not guilty to the petition, unless waived by both the state and the defendant. The State of Oklahoma may dismiss the petition without prejudice one time upon good cause shown to the court; ~~provided,~~ that any successor petition must be filed within forty-five (45) days of the date of the dismissal of the petition. Any revocation of a suspended sentence based on a technical violation shall not exceed six (6) months for a first revocation and five (5) years for a second or subsequent revocation.

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

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

D. 1. The Department of Corrections shall develop a matrix of technical violations and sanctions to address violations committed by persons who are being supervised by the Department. The Department shall be authorized to use a violation response and intermediate sanction process based on the sanction matrix to apply

to any technical violations of probationers. Within four (4) working days of the discovery of the violation, the probation officer shall initiate the violation response and intermediate 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, or request a revocation proceeding as provided by law. Every administrative hearing and sanction imposed by the Department shall be appealable to the district court.

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

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

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

3. At the hearing, if one of the grounds for the petition for revocation is the failure of the defendant to make timely restitution as ordered by the court, the court will hear evidence and if it appears to the satisfaction of the court from such evidence that the terms of the order of restitution create a manifest hardship on the defendant or the immediate family of the defendant, the court may cancel all or any part of the amount still due, or modify the terms or method of payment. Provided, if the court determines that a reduction in the restitution still due is warranted, the court shall equally apply the same percentage reduction to any court-ordered monetary obligation owed by the

defendant including, but not limited to, fines, court costs and costs of incarceration.

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

G. Notwithstanding the provisions of subsections A and B of this section, when the suspended sentence of a person is being considered for revocation for an offense where the penalty has subsequently been lowered to a misdemeanor, the sentence shall be modified to a term that does not exceed the current maximum sentence.

SECTION 4. AMENDATORY 22 O.S. 2011, Section 991c, as last amended by Section 12, Chapter 128, O.S.L. 2018 (22 O.S. Supp. 2018, 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 the defendant, defer further proceedings upon the specific conditions prescribed by the court not to exceed a seven-year period, except as authorized under subsection B of this section. 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 eighteen (18) months, unless a petition alleging violation of any condition of deferred judgment is filed during the period of supervision. 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 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 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. When the court has ordered restitution as a condition of supervision as provided for in subsection A of this section and that condition has not been satisfied, the court may, at any time prior to the termination or expiration of the supervision period, order an extension of supervision for a period not to exceed three (3) years.

C. 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 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 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.

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

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.

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

F. Whenever a judgment has been deferred by the court according to the provisions of this section, deferred judgment may not be accelerated for any technical violation unless a petition setting forth the grounds for such acceleration is filed by the district attorney with the clerk of the sentencing court and competent evidence justifying the acceleration of the judgment is presented to the court at a hearing to be held for that purpose. The hearing shall be held not more than twenty (20) days after the entry of the

plea of not guilty to the petition, unless waived by both the state and the defendant. Any acceleration of a deferred sentence based on a technical violation shall not exceed ninety (90) days for a first acceleration or five (5) years for a second or subsequent acceleration.

G. Upon any violation of the deferred judgment, other than a technical violation, 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.

H. 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 more than one 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.

I. 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.

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

K. Notwithstanding the provisions of subsections F and G of this section, a person who is being considered for an acceleration of a deferred judgment for an offense where the penalty has subsequently been lowered to a misdemeanor shall only be subject to a judgment and sentence that would have been applicable had he or she committed the offense after July 1, 2017.

SECTION 5. AMENDATORY 57 O.S. 2011, Section 332.2, as last amended by Section 1, Chapter 117, O.S.L. 2018 (57 O.S. Supp. 2018, Section 332.2), is amended to read as follows:

Section 332.2 A. The Pardon and Parole Board, which shall meet only on the call of the Chairman, is authorized, if and when an

application made to the Governor for a reprieve, commutation, parole, pardon, or other act of clemency is certified thereto by the Governor, to examine into the merits of said application and make recommendations to the Governor in relation thereto, said recommendation being advisory to the Governor and not binding thereon.

B. Any consideration for commutation shall be made only after application is made to the Pardon and Parole Board pursuant to the procedures set forth in this section. The Pardon and Parole Board shall provide a copy of the application to the district attorney, the victim or representative of the victim and the Office of the Attorney General within ten (10) business days of receipt of such application.

C. An application for commutation, other than those provided for in subsection F of this section, must be sent to the trial officials, who shall have twenty (20) business days to provide a written recommendation or protest prior to consideration of the application. Trial officials shall include:

1. The current elected judge of the court where the conviction was had;
2. The current elected district attorney of the jurisdiction where the conviction was had; or
3. The chief or head administrative officer of the arresting law enforcement agency.

D. In cases resolved prior to the tenure of the present officeholders, the recommendation or protest of persons holding such offices at the time of conviction may also be considered by the Board.

E. The recommendation for commutation of a sentence by a trial official may include the following:

1. A statement that the penalty now appears to be excessive;
2. A recommendation of a definite term now considered by the official as just and proper; and

3. A statement of the reasons for the recommendation based upon facts directly related to the case which were not available to the

court or jury at the time of the trial or based upon there having been a statutory change in penalty for the crime which makes the original penalty appear excessive.

F. The Pardon and Parole Board shall establish an accelerated, single-stage commutation docket for any applicant who has been convicted of a crime that has been reclassified from a felony to a misdemeanor under Oklahoma law. The Pardon and Parole Board shall be empowered to recommend to the Governor for commutation, by majority vote, any commutation application placed on the accelerated, single-stage commutation docket that meets the eligibility criteria provided above. The Department of Corrections shall certify a list of potentially eligible inmates to the Pardon and Parole Board within thirty (30) days of the effective date of this act.

G. The Pardon and Parole Board shall schedule the application on a commutation docket in compliance with the notice requirements set forth herein. The Board shall provide the victim or representative of the victim at least twenty (20) days to offer recommendations or protests before consideration of the application.

~~G.~~ H. Applications for commutation shall be given impartial review as required in Section 10 of Article VI of the Oklahoma Constitution.

~~H.~~ I. Any consideration for pardon shall be made only after application is made to the Pardon and Parole Board. Upon receipt of an application for pardon, the Board shall provide a copy of the application to the district attorney, the victim or representative of the victim and the Office of the Attorney General within twenty (20) business days of receipt of such application. The district attorney and the victim or representative of the victim shall have twenty (20) business days to provide written recommendation or protest prior to the consideration of the application. The Board shall schedule the application on a pardon docket in compliance with the notice requirements set forth herein.

~~I.~~ J. In accordance with Section 10 of Article VI of the Oklahoma Constitution, the Board shall communicate to the Legislature, at each regular session, by providing a summary of the activities of the Board. This summary shall include, but not be limited to, the following Board activity:

1. The approval or recommendation rates of the Board for both violent and nonviolent offenses;

2. The parole approval rates for each individual Board member for both violent and nonviolent offenses; and

3. The percentage of public comments to and personal appearances before the Board including victim protests and personal appearances, district attorney protests and personal appearances, and delegate recommendations and personal appearances on behalf of the offender.

This summary shall be made available to the public through publication on the website of the Pardon and Parole Board.

~~J.~~ K. The Pardon and Parole Board shall provide a copy of their regular docket and administrative parole docket to each district attorney in this state at least twenty (20) days before such docket is considered by the Board, or in the case of a supplemental, addendum or special docket, at least ten (10) days before such docket is considered by the Board, and shall notify the district attorney of any recommendations for commutations or paroles no later than twenty (20) days after the docket is considered by the Board.

~~K.~~ L. The Pardon and Parole Board shall notify all victims or representatives of the victim in writing at least twenty (20) days before an inmate is considered by the Board provided the Board has received a request from the victim or representatives of the victim for notice. The Board shall provide all victims or representatives of the victim with the date, time and place of the scheduled meeting and rules for attendance and providing information or input to the Board regarding the inmate or the crime. If requested by the victim or representatives of the victim, the Board shall allow the victim or representatives of the victim to testify at the parole hearing of the inmate for at least five (5) minutes.

~~L.~~ M. The Pardon and Parole Board shall notify all victims or representatives of the victim in writing of the decision of the Board no later than twenty (20) days after the inmate is considered by the Board.

~~M.~~ N. Any notice required to be provided to the victims or the representatives of the victim shall be mailed by first-class mail to the last-known address of the victim or representatives of the victim. It is the responsibility of the victims or representatives

of the victim to provide the Pardon and Parole Board a current mailing address. The victim-witness coordinator of the district attorney shall assist the victims or representatives of the victim with supplying their address to the Board if they wish to be notified. Upon failure of the Pardon and Parole Board to notify a victim who has requested notification and has provided a current mailing address, the final decision of the Board may be voidable, provided, the victim who failed to receive notification requests a reconsideration hearing within thirty (30) days of the recommendation by the Board for parole. The Pardon and Parole Board may reconsider previous action and may rescind a recommendation if deemed appropriate as determined by the Board.

~~N.~~ O. For purposes of this section, "victim" shall mean all persons who have suffered direct or threatened physical or emotional harm, or financial loss as the result of the commission or attempted commission of criminally injurious conduct, and "representatives of the victim" shall mean those persons who are members of the immediate family of the victim, including stepparents, stepbrothers, stepsisters, and stepchildren.

~~O.~~ P. All meetings of the Pardon and Parole Board shall comply with Section 301 et seq. of Title 25 of the Oklahoma Statutes; provided that the Board shall have the authority to limit the number of persons attending in support of, or in opposition to, any inmate being considered for parole and shall have the authority to exclude persons from attendance in accordance with prison security regulations and the capacity of the meeting room. Persons excluded from attending the meeting under this provision shall be informed of their right to be informed of the vote of the Board in accordance with Section 312 of Title 25 of the Oklahoma Statutes. Provided further, nothing in this section shall be construed to prevent any member of the press or any public official from attending any meeting of the Pardon and Parole Board, except as provided by the Oklahoma Open Meeting Act.

~~P.~~ Q. All victim information maintained by the Department of Corrections and the Pardon and Parole Board shall be confidential and shall not be released.

SECTION 6. This act shall become effective November 1, 2019.

Passed the House of Representatives the 16th day of May, 2019.

Presiding Officer of the House
of Representatives

Passed the Senate the 23rd day of May, 2019.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____