



Bill Summary: HB 1269

Authors:

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Status:

- Passed by the Legislature on May 28, 2019 and signed by Governor Kevin Stitt.

What the Bill Does:

- HB 1269 applies the non-violent drug possession and property crime provisions of State Question (SQ) 780 retroactively.
- Requires the Oklahoma Pardon and Parole Board to have an accelerated docket that will commute the sentences of those who are currently incarcerated for felony-simple drug possession and nonviolent property crimes under \$1000. Among those convicted of felony simple drug possession and/or property-crime, thousands will seek a modification of sentence and in most cases, immediate release and commuted prison stays.
- The Oklahoma Pardon and Parole Board will begin acting on HB 1269 within 30 days of its enactment on November 1, 2019. Oklahoma Department of Corrections is currently creating a list of inmates who are eligible.
- **ONLY** non-violent offenders are eligible.¹
- The average yearly cost of incarceration in DOC custody is \$21,425.50 per inmate.
- HB 1269 also provides an opportunity for those who committed “SQ 780 crimes” before the state questions enactment, to get their records expunged, no longer carrying the mark of FELON, thereby providing a better opportunity for reentry success.

Questions About HB 1269:

- *Q:* Will this bill allow people convicted of more serious crimes to get out earlier?
A: NO. SQ 780 made minor drug possession and minor property crimes a misdemeanor. Through the commutation process, those who are past the maximum misdemeanor penalty for applicable crimes under SQ 780 will be released. If they are incarcerated for a number of other crimes or a controlling crime, they will still have to serve the sentence for their other offenses.
- *Q:* Is the process of expungement easier?
A: Unfortunately, NO. Oklahoma’s expungement procedures are complex, even for seasoned attorneys. Individuals will still have to file a petition with county district courts, send copies to the district attorney’s office, law enforcement and the Oklahoma Bureau of Special Investigations

¹ For those currently incarcerated, the requirements for retroactivity are you must be an individual convicted of a felony, prior to the passage and initiation of SQ 780, that is now a misdemeanor. This will not impact sentences given for violent and other controlling crimes. Those who are not incarcerated, but have felonies on their criminal record that are now misdemeanors prior to SQ 780, are eligible for expungement if they do not have other overbearing felonies and meet Oklahoma’s statutory time tables for expungement.

to have their record sealed. Once a judge signs off on the order, the order must be delivered to the above agencies and offices. It is rare, but they can challenge the expungement.

HB 1269 does make it a little more convenient for individuals because the forms are in the statute. At this time, however, individuals seeking an expungement are still advised to meet and work with an attorney. Also, quite a bit of official work in Oklahoma is still done by paper, and individuals should, personally and through counsel, make sure that all agencies and offices involved have sealed the records after an order by the judge.

- *Q*: How many people will be released?

A: As of August 2019, the Oklahoma DOC estimates roughly 800 inmates who are incarcerated for drug possession are eligible for release. Due to DOC's archaic record keeping, however, officials are giving new numbers on almost a weekly basis. The number could rise to above 1000 before the November 1 enactment date. Roughly 400 other inmates will see their sentences reduced and about 1200 have other controlling crimes that will likely keep them incarcerated. Again, these numbers are likely to change as November 1 approaches.

Those with property crimes are much trickier. A mere 50 are believed to be eligible at this time. More than a thousand others may be, but SQ 780 classifies crimes by the dollar amount of the property involved in the crime. It is well known that a vast majority of cases are plead out which has led to a lack of property value calculations being recorded. With nothing to go by, securing a docket of property-crime commutations is extremely difficult. Follow-up legislation is needed to cure this problem so people who are serving felony time over what is now a misdemeanor are sentenced in the same manner as those convicted of the same crimes today.

What Needs to be Done Once HB 1269 is Enacted:

- People who were convicted of an applicable felony crime before the passage of SQ 780 that is now classified as a misdemeanor can now get their records expunged.

MANY PEOPLE WILL NOT KNOW THIS.

A public service campaign should take place so people can seal their records and have an easier time getting a job and reintegrating into society. Expungement means they can say the events and court actions around their offense never happened, removing an enormous barrier to a successful second chance.

- Those who are incarcerated for applicable property crimes should get the relief both voters and legislators placed into statute. Follow-up legislation is a priority to fulfill the intent of the law.

What Do People Think:

- Polling done in March 2019 by Ascend Perspectives shows GOP voters support retroactivity ranging from 69% to 84% among several districts representing rural, suburban, and urban populations.
- Oklahomans voted in favor of lowering the severity of drug possession and certain property crime laws by 58 percent because too many people are walking with a scarlet letter of "felon" due to these lower level offenses.