

ENROLLED SENATE
BILL NO. 843

BY: SMITH of the SENATE

and

STEIDLEY of the HOUSE

AN ACT RELATING TO CRIMINAL PROCEDURE; AMENDING 22 O.S. 1991, SECTION 18, WHICH RELATES TO EXPUNGEMENT; MODIFYING CIRCUMSTANCES FOR WHICH A PERSON IS AUTHORIZED TO FILE A MOTION FOR EXPUNGEMENT; AMENDING 22 O.S. 1991, SECTION 991c, WHICH RELATES TO DEFERRED JUDGMENT PROCEDURE; PROVIDING PROCEDURE TO EXPUNGE DEFENDANT'S CRIMINAL RECORD; REQUIRING CERTAIN ORDERS BE REMOVED FROM CASE FILE AND RETAINED IN CONFIDENTIAL FILE; REQUIRING CERTAIN REFERENCES BE DELETED FROM DOCKET SHEET; RESTRICTING RELEASE OF CONFIDENTIAL INFORMATION; PROVIDING EXCEPTION; SPECIFYING ACTION TO EXPUNGE CERTAIN INFORMATION FROM PUBLIC INDEX; AUTHORIZING OTHER ALTERNATIVES TO EXPUNGE CERTAIN RECORDS BY QUALIFIED DEFENDANTS; PROVIDING EXPUNGEMENT PROCEDURE TO BE AVAILABLE RETROACTIVELY; AMENDING 21 O.S. 1991, SECTION 1283, WHICH RELATES TO CONVICTED FELONS CARRYING FIREARMS; ADDING EXCEPTION TO PROHIBITION OF CARRYING FIREARMS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 18, is amended to read as follows:

Section 18. 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 person was arrested and no charges are filed or charges are dismissed within one (1) year of the arrest; ~~or~~
3. the statute of limitations on the offense had expired and no charges were filed; or
4. 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.

For purposes of this act, "expungement" shall mean the sealing of criminal records.

SECTION 2. AMENDATORY 22 O.S. 1991, 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 and place the defendant on probation under the supervision of the State Department of Corrections upon the conditions of probation prescribed by the

court. The court shall first consider restitution, administered in accordance with the provisions pertaining thereto, among the various conditions of probation it may prescribe. The court may also consider ordering the defendant to engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the defendant. Further, the court may order the defendant confined to the county jail for a period not to exceed ninety (90) days to be served in conjunction with probation. Further, the court may order the defendant to pay a sum into the court fund not to exceed the amount of fine authorized for the offense alleged against the defendant or authorized under Section 9 of Title 21 of the Oklahoma Statutes and an amount for reasonable attorney fee, to be paid into the court fund, if a court-appointed attorney has been provided to defendant. Further, the court may, 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, 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 such person to participate in one or both of the following:

~~(1) an~~ 1. An alcohol and drug substance abuse course, pursuant to Sections 11-902.2 and 11-902.3 of Title 47 of the Oklahoma Statutes; and

~~(2) a~~ 2. A victims impact panel program sponsored by the Highway Safety Division of the Oklahoma Department of Transportation, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not to exceed Five Dollars (\$5.00), 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.

B. Upon completion of the probation term, which probation term under this procedure shall not exceed five (5) years, the defendant shall be discharged without a court judgment of guilt, and the verdict or plea of guilty or plea of nolo contendere shall be expunged from the record and said charge shall be dismissed with prejudice to any further action. The procedure to expunge the defendant's record shall be as follows:

1. The order of probation and the expunge order on a verdict or plea of guilty or plea of nolo contendere shall be removed from the case file and retained, together with a copy of the docket sheet in a separate confidential file;

2. All references to the defendant's verdict or plea of guilty or nolo contendere shall be deleted from the docket sheet, including but not limited to, minutes or notations to payment of fines, costs, victims compensation, restitution, community service or other requirements of probation until only the references to the dismissal of the case remain on the docket sheet;

3. No information concerning the confidential file shall be revealed or released, except upon written order of a judge of the district court;

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

C. The provisions of subsection B of this section shall be retroactive.

D. Upon violation of the conditions of probation, the court may enter a judgment of guilt and proceed as provided in Section 991a of this title. Further, if the probation is for a felony offense, and the defendant violates the conditions of probation by committing another felony offense, the defendant shall not be allowed bail pending appeal. The deferred judgment procedure described in this section shall only apply to defendants not having been previously convicted of a felony.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 1283, is amended to read as follows:

Section 1283. A. It shall be unlawful for any person having previously been convicted of any felony in any court of a state or of the United States to have in his possession or under his immediate control, or in any vehicle which he is operating, or in which he is riding as a passenger, any pistol, imitation or homemade pistol, machine gun, sawed-off shotgun or rifle, or any other dangerous or deadly firearm which could be easily concealed on the person, in personal effects or in an automobile; provided any person elected or appointed as a peace officer who has previously been convicted of any felony in any court of a state or of the United States, and who has received a full and complete pardon from the proper authority and has been subsequently certified by the Oklahoma Council on Law Enforcement Education and Training, pursuant to Section 3311 of Title 70 of the Oklahoma Statutes, and is actively employed as a full-time peace officer on the effective date of this act, shall be permitted to possess a weapon specified in this section for the sole purpose of performing duties of a peace officer. For the purposes of this section, "sawed-off shotgun or rifle" shall mean any shotgun or rifle which has been shortened to any length.

B. Any person who has previously been convicted of a nonviolent felony in any court in the state of Oklahoma, and who has received a full and complete pardon from the proper authority shall be permitted to possess a weapon specified in this section to the extent necessary for the pursuit of gunsmithing or firearm repair, provided such person has graduated from a gunsmithing school conducted by an institution whose accreditation is recognized by the Oklahoma State Regents for Higher Education and who is engaged in the occupation of gunsmithing or firearm repair.

SECTION 4. This act shall become effective September 1, 1992.
Passed the Senate the 27th day of April, 1992.

President of the Senate

Passed the House of Representatives the 20th day of April, 1992.

Speaker of the House of Representatives

