

SHORT TITLE: An Act relating to criminal records;
authorizing expungement of civil and criminal
forfeiture actions; effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 676

By: Cain

AS INTRODUCED

An Act relating to criminal records; amending 22 O.S. 1991, Sections 18, as amended by Section 1, Chapter 151, O.S.L. 1992 and 19 (22 O.S. Supp. 1993, Section 18), which relate to expungement and sealing of criminal records; modifying reference; deleting time limitation before records may be expunged; modifying definition; authorizing expungement of civil and criminal forfeiture actions; authorizing certain destruction of records; specifying time after which record may be destroyed; 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, as amended by Section 1, Chapter 151, O.S.L. 1992 (22 O.S. Supp. 1993, 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 person was arrested and no charges are filed or charges are dismissed ~~within one (1) year of~~ after the arrest;
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.

B. For purposes of Section 18 et seq. of this act title, "expungement" shall mean the sealing of criminal records or civil or criminal forfeiture actions based upon any criminal act.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 19, is amended to read as follows:

Section 19. A. Any person qualified under Section 18 of ~~Title 22 of the Oklahoma Statutes~~ this title may petition the district court of the district in which the arrest information pertaining to him is located for the sealing of all or any part of said record, except basic identification information.

B. Upon the filing of a petition or entering of a court order, the court shall set a date for a hearing, which hearing may be closed at the court's discretion, and shall provide thirty (30) days of notice of the hearing to the district attorney, the arresting agency, the Oklahoma State Bureau of Investigation, and any other person or agency whom the court has reason to believe may have relevant information related to the sealing of such record.

C. Upon a finding that the harm to privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court may order such records, or any part thereof except basic identification information, to be sealed. If the court finds that neither sealing of the records nor maintaining of the records unsealed by the agency would serve the ends of justice, the court may enter an appropriate order limiting access to such records.

Any order entered under this subsection shall specify those agencies to which such order shall apply.

D. Upon the entry of an 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.

E. 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.

F. 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.

G. All arrest and criminal records information existing prior to the effective date of this section, except basic identification information, is also subject to sealing in accordance with subsection C of this section.

H. ~~Nothing~~ Except as specified in subsections J and K of this section, nothing in this section shall be construed to authorize the physical destruction of any criminal justice records.

I. For the purposes of this section, sealed materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document.

J. For the purposes of Section 18 et seq. of this act title, district court index reference of sealed material shall be destroyed, removed or obliterated.

K. Any record ordered to be sealed pursuant to this act, if not unsealed ~~within ten (10) years of the expungement order, may, shall~~ be obliterated or destroyed at the end of said ten-year period at the request of the person who requested expungement of said record

when the case giving rise to said record has been finally adjudicated for more than ten (10) years, or a period of ten (10) years shall have elapsed since any pleading, other than a pleading requesting expungement, has been filed in said case. For purposes of this subsection, "finally adjudicated" shall mean the occurrence of one of the events set forth in paragraphs 1, 2 or 3 of subsection A of Section 18 of this title.

L. Subsequent to records being sealed as provided herein, the district attorney, the arresting agency, the Oklahoma State Bureau of Investigation, or other interested person or agency may petition the court for an order unsealing said records. Upon filing of a petition the court shall set a date for hearing, which hearing may be closed at the court's discretion, and shall provide thirty (30) days' notice to all interested parties. If, upon hearing, the court determines there has been a change of conditions or that there is a compelling reason to unseal the records, the court may order all or a portion of the records unsealed.

M. Nothing herein shall prohibit the introduction of evidence regarding actions sealed pursuant to the provisions of this section at any hearing or trial for purposes of impeaching the credibility of a witness or as evidence of character testimony pursuant to Section 2608 of Title 12 of the Oklahoma Statutes.

SECTION 3. This act shall become effective September 1, 1994.

44-2-1808

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