

ENGROSSED HOUSE
BILL NO. 2790

By: Askins, Dank and Nance of
the House

and

Wilkerson and Smith of the
Senate

An Act relating to criminal procedure; amending 22 O.S. 2001, Section 19, which relates to expungement of records; specifying parties that may appeal orders; modifying which court shall hear appeals; requiring notice of appeal be given to Oklahoma State Bureau of Investigation; amending 22 O.S. 2001, Section 152, which relates to limitations in general; providing exception to the statute of limitations under certain circumstances; allowing retroactive application; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 19, is amended to read as follows:

Section 19. A. Any person qualified under Section 18 of this title may petition the district court of the district in which the arrest information pertaining to the person is located for the sealing of all or any part of the 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 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. Any order entered pursuant to this subsection may be appealed by the petitioner, the district attorney, the arresting agency, or the Oklahoma State Bureau of Investigation to the Oklahoma Supreme Court ~~of Criminal Appeals~~ in accordance with the rules of the Oklahoma Supreme Court ~~of Criminal Appeals~~. In all such appeals, the Oklahoma State Bureau of Investigation is a necessary party and must be given notice of the appellate proceedings.

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 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 this act, district court index reference of sealed material shall be destroyed, removed or obliterated.

K. Any record ordered to be sealed pursuant to Section 1 et seq. of this title, if not unsealed within ten (10) years of the expungement order, may be obliterated or destroyed at the end of the ten-year period.

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 2. AMENDATORY 22 O.S. 2001, Section 152, is amended to read as follows:

Section 152. A. Prosecutions for the crimes of bribery, embezzlement of public money, bonds, securities, assets or property of the state or any county, school district, municipality or other subdivision thereof, or of any misappropriation of public money, bonds, securities, assets or property of the state or any county, school district, municipality or other subdivision thereof, falsification of public records of the state or any county, school district, municipality or other subdivision thereof, and conspiracy to defraud the State of Oklahoma or any county, school district, municipality or other subdivision thereof in any manner or for any purpose shall be commenced within seven (7) years after the discovery of the crime; provided, however, prosecutions for the crimes of embezzlement or misappropriation of public money, bonds, securities, assets or property of any school district, including those relating to student activity funds, or the crime of falsification of public records of any independent school district, the crime of criminal conspiracy, or the crime of embezzlement, pursuant to Sections 1451 through 1462 of Title 21 of the Oklahoma Statutes shall be commenced within five (5) years after the discovery of the crime.

B. Prosecutions for criminal violations of any state income tax laws shall be commenced within five (5) years after the commission of such violation.

C. 1. Prosecutions for the crime of rape or forcible sodomy, sodomy, lewd or indecent proposals or acts against children, involving minors in pornography pursuant to ~~Sections~~ Section 886, 888, 1111, 1111.1, 1113, 1114, 1021.2, 1021.3 or 1123 of Title 21 of

the Oklahoma Statutes, and child abuse pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, shall be commenced within seven (7) years after the discovery of the crime.

2. However, prosecutions for the crimes listed in paragraph 1 of this subsection shall be commenced at any time after the commission of the offense if:

- a. physical evidence is collected and preserved that is capable of being tested to obtain a profile from deoxyribonucleic acid (DNA),
- b. the identity of the offender is established through the use of a DNA profile using evidence collected at the time of the offense, and
- c. the victim notified law enforcement within seven (7) years of the discovery of the crime.

If the physical evidence is being tested or retested due to a reopening of an investigation the analysis must be completed within three (3) years. This paragraph shall have retroactive application to crimes committed prior to the effective date of this act.

D. Prosecutions for criminal violations of any provision of the Oklahoma Wildlife Conservation Code shall be commenced within three (3) years after the commission of such offense.

E. Prosecutions for the crime of criminal fraud or workers' compensation fraud pursuant to ~~Sections~~ Section 1541.1, 1541.2, 1662 or 1663 of Title 21 of the Oklahoma Statutes shall commence within three (3) years after the discovery of the crime, but in no event greater than seven (7) years after the commission of the crime.

F. Prosecution for the crime of false or bogus check, Section 1541.1, 1541.2, 1541.3 or 1541.4 of Title 21 of the Oklahoma Statutes, shall be commenced within five (5) years after the commission of such offense.

G. In all other cases a prosecution for a public offense must be commenced within three (3) years after its commission.

H. As used in subsection C of this section, "discovery" means the date that a physical or sexually related crime involving a victim under the age of eighteen (18) years of age is reported to a law enforcement agency, up to and including one (1) year from the eighteenth birthday of the child.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 28th day of February, 2002.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2002.

Presiding Officer of the Senate