

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1646

By: Shurden

AS INTRODUCED

An Act relating to criminal procedure; authorizing expungement of record for certain offense; providing eligibility requirements; providing procedure for certain expungement of record; directing ex parte hearing and order for drug and alcohol testing; providing for payment of certain testing; requiring certain test results be submitted to court prior to certain hearing; directing notice and hearing; providing for summary denial of certain petition based upon certain test results; setting period of denial; requiring testimony and evidence; requiring the court to make determination of expungement; providing for temporary order and testing; limiting period of temporary order; providing for denial of expungement; amending 22 O.S. 2001, Section 18, which relates to authorized expungements; providing for expungement for certain offenses under certain circumstances; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18a of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Any person convicted of any offense pursuant to Section 11-902 of Title 47 of the Oklahoma Statutes or any offense pursuant to subsection A,C or G of Section 2-401, subsection A of Section 2-402, subsection A, B or C of Section 2-405, or subsection A or B of Section 2-407 of Title 63 of the Oklahoma Statutes may petition the court for expungement of the criminal record when:

1. The person has completed the sentence imposed for the eligible offense and paid all fines and costs assessed;
2. The person has received treatment for alcohol or other intoxicating or controlled substance and has been consistently drug

and alcohol free for three (3) or more years following the completion of the sentence;

3. The person has not been dependent upon or addicted to any intoxicating or controlled substance for three (3) or more years following the completion of the sentence;

4. The person has not been charged, convicted or arrested for any criminal offense for three (3) or more years following the completion of the sentence;

5. The person is willing to submit to periodic random drug and alcohol testing for one (1) year upon a court-ordered temporary expungement of the criminal record as provided in this section; and

6. The person has no other felony criminal convictions of record in this state or any other state or the United States.

B. When the person has completed the terms and condition of any sentenced imposed for an eligible offense and the person meets the other eligibility requirements provided in this section, the person may petition the court for a criminal record expungement. Upon the filing of a petition pursuant to this section, the court shall order by ex parte hearing that the petitioner submit to an alcohol and drug test to be conducted at the petitioner's expense by either a hospital or a law enforcement agency, in the court's discretion. The test results shall be provided to the court directly by the testing authority before the court sets a full hearing on the petition for expungement. Upon receiving the results of a test which indicate a negative presence for any drug or alcohol, the court shall notify the district attorney, the arresting agency and any other person whom the court has reason to believe may have relevant information related to the sealing of the record as provided in Section 19 of Title 22 of the Oklahoma Statutes. If the test results indicate a positive presence for drugs or alcohol, the petition shall be summarily denied and another petition for expungement shall not be considered for an additional two (2) years.

At the full hearing as provided by Section 19 of Title 22 of the Oklahoma Statutes, the petitioner shall give testimony. The district attorney may object to granting an expungement of the criminal record and offer evidence of ineligibility to meet the requirements of this section or other evidence why an expungement is not proper. The court shall determine whether to expunge the criminal record based upon the intent of this act and the findings required by subsection C of Section 19 of Title 22 of the Oklahoma Statutes. The court may make a temporary order for expungement contingent upon periodic random drug and alcohol testing for any period not to exceed one (1) year before granting the expungement. If at any time while the temporary order is in effect the court determines the petitioner is abusing drugs or alcohol the court may deny the expungement.

SECTION 2. AMENDATORY 22 O.S. 2001, 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 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 district attorney subsequently dismissed the charge;
3. The person was arrested and no charges are filed or charges are dismissed within one (1) year of the arrest;
4. The statute of limitations on the offense had expired and no charges were filed;
5. 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;

6. The offense was a misdemeanor, the person has not been convicted of any other misdemeanor or felony, no felony or misdemeanor charges are pending against the person, and at least ten (10) years have passed since the judgment was entered; ~~or~~

7. The offense was a nonviolent felony, as defined in Section 571 of Title 57 of the Oklahoma Statutes, the person has received a full pardon for the offense, the person has not been convicted of any other misdemeanor or felony, no felony or misdemeanor charges are pending against the person, and at least ten (10) years have passed since the conviction; or

8. The person meets the eligibility requirements pursuant to Section 1 of this act.

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

SECTION 3. This act shall become effective November 1, 2002.

48-2-2726          NP          6/12/2015 11:06:23 AM