

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL 1164

By: Johnson

COMMITTEE SUBSTITUTE

[ criminal procedure - authorizing expungement of  
certain records related to identity theft - creating  
Oklahoma Identity Theft Passport Program -  
codification - effective date -  
emergency ]

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 18, as last amended by Section 17, Chapter 3, O.S.L. 2003 (22 O.S. Supp. 2003, 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 factual innocence of the person was established by the use of deoxyribonucleic acid (DNA) evidence subsequent to conviction;
4. The person was arrested and no charges of any type, including charges for an offense different than that for which the person was originally arrested are filed or charges are dismissed within one (1) year of the arrest;
5. The statute of limitations on the offense had expired and no charges were filed;

6. 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;

7. 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~~

8. 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

9. The person has been charged or arrested or is the subject of an arrest warrant for a crime that was committed by another person who has appropriated or used the person's name or other identification without the person's consent or authorization.

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19a of Title 22, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any provision of Section 18 or 19 of Title 22 of the Oklahoma Statutes, when a charge is dismissed because the court finds that the defendant has been arrested or charged as a result of the defendant's name or other identification having been appropriated or used without the defendant's consent or authorization by another person, the court dismissing the charge may, upon motion of the district attorney or the defendant or upon the court's own motion, enter an order for expungement of law enforcement and court records relating to the charge. The order shall contain a statement that the dismissal and expungement are

ordered pursuant to this section. An order entered pursuant to this section shall be subject to the provisions of subsections D through M of Section 19 of Title 22 of the Oklahoma Statutes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19b of Title 22, unless there is created a duplication in numbering, reads as follows:

A. For purposes of protecting persons who are the victims of identity theft, there is hereby created the "Oklahoma Identity Theft Passport Program". The Attorney General shall administer the Oklahoma Identity Theft Passport Program, prescribe procedures and policies for issuing the passport consistent with this act, and provide information to law enforcement agencies explaining the program.

B. A person shall be eligible for an Oklahoma Identity Theft Passport if:

1. The person has obtained an order for expungement and sealing of records pursuant to Sections 18 and 19 of Title 22 of the Oklahoma Statutes on grounds that the person has been charged or arrested or is the subject of an arrest warrant for a crime that was committed by another person who has appropriated or used the person's name or other identification without the person's consent or authorization or an order for expungement and sealing of records pursuant to Section 2 of this act from a court that dismissed a charge against the person on such grounds; or

2. The person has filed an identity theft report with a federal, state, or local law enforcement agency and has submitted a copy of the identity theft report and an identity theft affidavit with supporting documentation to one or more consumer reporting agencies. For purposes of this act, "identity theft report", "identity theft affidavit", and "consumer reporting agency" shall be defined as provided in The Fair Credit Report Act, 15 United States Code, Section 1681 et seq.

C. To apply for an Identity Theft Passport the person shall submit to the Attorney General a certified copy of a court order for expungement and sealing of records or copies of an identity theft report and identity theft affidavit that have been filed and submitted to a consumer reporting agency. The Attorney General may prescribe other application requirements deemed necessary.

D. The Attorney General shall issue the Identity Theft Passport unless the Attorney General finds good cause not to issue the passport. The passport shall state whether the passport is issued on the basis of an order for expungement or an identity theft report and affidavit having been submitted to the Attorney General's office.

E. Upon issuance of an Identity Theft Passport, the Attorney General shall notify the Oklahoma State Bureau of Investigation and the Department of Public Safety. The passport shall be attached to any records maintained by these agencies, including criminal history records for purposes of criminal background checks and law enforcement telecommunications checks.

F. The Attorney General shall maintain records of Identity Theft Passport requests and issuances and may provide such information to law enforcement agencies upon request of an agency or officer. Such records in the possession of the Attorney General or law enforcement officers shall not be public records and shall not be subject to the Oklahoma Open Records Act.

SECTION 4. This act shall become effective July 1, 2004.

SECTION 5. 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.