

ENROLLED SENATE
BILL NO. 1164

By: Johnson of the Senate

and

Winchester, Nance and
Ingmire of the House

An Act relating to criminal procedure; amending 22 O.S. 2001, Section 18, as last amended by Section 1 of Enrolled House Bill No. 2271 of the 2nd Session of the 49th Oklahoma Legislature, which relates to expungement of records; authorizing expungement of certain records related to crimes arising from identity theft; requiring court to order certain records expunged; creating Oklahoma Identity Theft Passport Program; requiring Oklahoma State Bureau of Investigation to administer certain program; allowing certain persons to obtain Oklahoma identity theft passport; stating procedures for obtaining certain document; requiring Oklahoma State Bureau of Investigation to maintain certain records, provide information to law enforcement, and include certain document in criminal history records; sealing certain records except to law enforcement agencies and officers; authorizing reasonable fee for processing certain applications; limiting use of identity theft passports; providing for codification; providing an effective date; and declaring an 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 1 of Enrolled House Bill No. 2271 of the 2nd Session of the 49th Oklahoma Legislature, 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, or all charges are dismissed on the merits;

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. Records expunged pursuant to paragraph 9 of this section shall be sealed to the public but not to law enforcement agencies for law enforcement purposes.

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 Oklahoma State Bureau of Investigation (OSBI) shall administer the Oklahoma Identity Theft Passport Program, prescribe procedures and policies for issuing the identity theft 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:

- a. 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
- b. 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 OSBI 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 OSBI may prescribe other application requirements as deemed necessary.

D. The OSBI shall issue the identity theft passport unless the OSBI finds reasonable cause not to issue the identity theft passport. The identity theft passport shall state whether the identity theft passport is issued on the basis of an order for expungement or an identity theft report and affidavit having been submitted to the OSBI.

E. Upon issuance of an identity theft passport, the OSBI shall notify the Department of Public Safety. The identity theft passport shall be attached to any records maintained by the OSBI or the

Department of Public Safety, including criminal history records for purposes of criminal background checks and law enforcement telecommunications checks. The record of an identity theft passport shall be sealed except to law enforcement authorities.

F. The OSBI 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 OSBI or other law enforcement agencies and officers shall not be public records and shall not be subject to the Oklahoma Open Records Act.

G. The OSBI may prescribe a reasonable fee for processing applications for identify theft passports by administrative rule.

H. The OSBI shall design the identity theft passport, which may include picture identification.

I. An identity theft passport shall be used only for law enforcement purposes, including criminal background checks and similar public safety purposes. Financial institutions and other private entities are not required to honor an identity theft passport as proof of identity or proof of identity theft.

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.

Passed the Senate the 18th day of May, 2004.

Presiding Officer of the Senate

Passed the House of Representatives the 24th day of May, 2004.

Presiding Officer of the House
of Representatives

