

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

SENATE BILL 1373

By: Myers

AS INTRODUCED

An Act relating to criminal procedure; providing for expungement of certain victim protective orders pursuant to the Protection from Domestic Abuse Act; setting eligibility criteria for expungement; providing procedures for expungement; defining terms; requiring petition, notice, answer and hearing within certain time periods; requiring no objection or certain court findings; construing effects of sealing certain records; directing sealing of certain records; allowing certain persons access to sealed records; prohibiting denial of application by employers for failure to disclose sealed information; construing application of act; allowing destruction of certain records after certain time period; allowing certain evidence from sealed records for certain purpose; 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 60.13 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Persons authorized to file a motion for expungement of victim protective orders (VPOs) issued pursuant to the Protection from Domestic Abuse Act in this state must be within one of the following categories:

1. An ex parte order was issued to the plaintiff but later terminated due to dismissal of the petition before the full hearing or denial of the petition upon full hearing, or failure of the plaintiff to appear for full hearing and at least ninety (90) days have passed since the date set for full hearing;

2. The plaintiff filed an application for a victim protective order and failed to appear for full hearing and at least ninety (90)

days have passed since the date last set by the court for full hearing, including the last date set for any continuance, postponement or rescheduling of such hearing;

3. The plaintiff or defendant has had the order vacated and three (3) years have passed since the order to vacate was entered;

4. The plaintiff or defendant is deceased;

5. The plaintiff or defendant has had the order modified removing the plaintiff or defendant from the order and three (3) years have passed since the order removing the person was entered;

6. The protective order has no expiration date and ten (10) years have passed since the order was entered;

7. The plaintiff or defendant has not been a resident of this state for six (6) years or more and the other party to the protective order has remained a resident of this state during said time;

8. The plaintiff and defendant have remarried to each other and the order has been vacated or rescinded and three (3) years have passed since the order to vacate or rescind was entered, or five (5) years have passed since the date the remarriage occurred;

9. The protective order has expired and three (3) years have passed since the expiration of the order;

10. The protective order was a mutual protective order and ten (10) years have passed since the original order was entered;

11. The plaintiff or defendant was under eighteen (18) years of age at the time the protective order was entered and the order has been vacated, rescinded or has expired, and three (3) years have passed since the order was vacated, rescinded or expired; or

12. The protective order has been vacated, modified, rescinded, terminated, denied or is expired but the party does not meet the mandatory waiting period specified in the appropriate provision of paragraphs 1 through 11 of this subsection. The parties must file a joint motion to expunge and affirmatively show

the court at the hearing why the statutory waiting period should be waived. In such cases, the court, after consideration of the facts and other information presented, may waive all but ninety (90) days of the waiting period specified in paragraphs 1 through 11 of this subsection.

B. For purposes of this section:

1. "Expungement" means the sealing of victim protective order (VPO) court records from public inspection, but not from law enforcement agencies, the court or the district attorney;

2. "Plaintiff" means the person or persons who sought the original victim protective order (VPO) for cause;

3. "Defendant" means the person or persons to whom the victim protective order (VPO) was directed; and

4. "Mutual protective order" means the court ordered both parties to cease behaviors and contact with each other and granted a victim protective order (VPO) to each party.

C. 1. Any person qualified under Section 1 of this act may petition the district court of the district in which the protective order pertaining to the person is located for the expungement and sealing of the court records from public inspection. The face of the petition shall state whether the defendant in the protective order has been convicted of any violation of the protective order and whether any prosecution or complaint is pending in this state or any other state for a violation or alleged violation of the protective order that is sought to be expunged. The petition shall further state the authority pursuant to subsection A of this section for eligibility for requesting the expungement. The other party to the protective order shall be mailed a copy of the petition by certified mail within ten (10) days of filing said petition. A written answer or objection may be filed within thirty (30) days of receiving the notice and petition.

2. Upon the filing of a petition, the court shall set a date for a hearing and shall provide at least a thirty-day notice of the hearing to all parties to the protective order, the district attorney, 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 the victim protective order (VPO) court record.

3. Without objection from the other party to the victim protective order (VPO) or upon a finding that the harm to privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public and safety interests of the parties to the protective order in retaining the records, the court may order the court record, or any part thereof, to be sealed from public inspection. Any order entered pursuant to this section shall not limit or restrict any law enforcement agency, the district attorney or the court from accessing said records without the necessity of a court order. Any order entered pursuant to this subsection may be appealed by any party to the protective order or by the district attorney to the Oklahoma Supreme Court in accordance with the rules of the Oklahoma Supreme Court.

4. Upon the entry of an order to expunge and seal from public inspection a victim protective order (VPO) court record, or any part thereof, the subject official actions shall be deemed never to have occurred, and the persons in interest and the public may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to the persons.

5. Inspection of the protective order court records included in the expungement order issued pursuant to this section may thereafter be permitted only upon petition by the persons in interest who are the subjects of such records or without petition by the district attorney or a law enforcement agency in the due course of investigation of a crime.

6. 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 protective order court records. An applicant need not, in answer to any question concerning such 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. Said application may not be denied solely because of the applicant's refusal to disclose protective order court records information that has been sealed.

7. The provisions of this section shall apply to all protective order court records existing in the district courts of this state on, before and after the effective date of this section.

8. Nothing in this section shall be construed to authorize the physical destruction of any court records, except as otherwise provided by law for records no longer required to be maintained by the court.

9. 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.

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

11. Any record ordered to be sealed pursuant to this section may be obliterated or destroyed at the end of the ten-year period.

12. 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. This act shall become effective November 1, 2004.

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