

EHB 1465

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THE STATE SENATE
Monday, April 4, 2005

ENGROSSED

House Bill No. 1465

ENGROSSED HOUSE BILL NO. 1465 - By: SHERRER, DUNCAN, ROAN, TURNER,
KIESEL, BRANNON and SMITHSON of the House and LERBLANCE of the
Senate.

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

6 2. The plaintiff filed an application for a victim protective
7 order and failed to appear for the full hearing and at least ninety
8 (90) days have passed since the date last set by the court for the
9 full hearing, including the last date set for any continuance,
10 postponement or rescheduling of the hearing;

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

14 4. The plaintiff or defendant is deceased.

15 B. For purposes of this section:

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

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

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

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

16 2. Upon the filing of a petition, the court shall set a date
17 for a hearing and shall provide at least a thirty-day notice of the
18 hearing to all parties to the protective order, the district
19 attorney, and any other person or agency whom the court has reason
20 to believe may have relevant information related to the sealing of
21 the victim protective order (VPO) court record.

22 3. Without objection from the other party to the victim
23 protective order (VPO) or upon a finding that the harm to the

1 privacy of the person in interest or dangers of unwarranted adverse
2 consequences outweigh the public and safety interests of the parties
3 to the protective order in retaining the records, the court may
4 order the court record, or any part thereof, to be sealed from
5 public inspection. Any order entered pursuant to this section shall
6 not limit or restrict any law enforcement agency, the district
7 attorney or the court from accessing said records without the
8 necessity of a court order. Any order entered pursuant to this
9 subsection may be appealed by any party to the protective order or
10 by the district attorney to the Oklahoma Supreme Court in accordance
11 with the rules of the Oklahoma Supreme Court.

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

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

1 6. Employers, educational institutions, state and local
2 government agencies, officials, and employees shall not require, in
3 any application or interview or otherwise, an applicant to disclose
4 any information contained in sealed protective order court records.
5 An applicant need not, in answer to any question concerning the
6 records, provide information that has been sealed, including any
7 reference to or information concerning the sealed information and
8 may state that no such action has ever occurred. The application
9 may not be denied solely because of the refusal of the applicant to
10 disclose protective order court records information that has been
11 sealed.

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

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

19 9. For the purposes of this section, sealed materials which are
20 recorded in the same document as unsealed material may be recorded
21 in a separate document, and sealed, then obliterated in the original
22 document.

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

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

6 12. Nothing herein shall prohibit the introduction of evidence
7 regarding actions sealed pursuant to the provisions of this section
8 at any hearing or trial for purposes of impeaching the credibility
9 of a witness or as evidence of character testimony pursuant to
10 Section 2608 of Title 12 of the Oklahoma Statutes.

11 SECTION 2. This act shall become effective November 1, 2005.

12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-29-05 - DO
13 PASS.