STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2785 By: Smaligo

AS INTRODUCED

An Act relating to expungements; amending 74 O.S. 2001, Section 150.12, as last amended by Section 1, Chapter 378, O.S.L. 2005 (74 O.S. Supp. 2005, Section 150.12), which relates to mandatory reporting of fingerprint and criminal history information; providing certain exception to payment of fee for expungement orders; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 150.12, as last amended by Section 1, Chapter 378, O.S.L. 2005 (74 O.S. Supp. 2005, Section 150.12), is amended to read as follows:

Section 150.12 A. 1. It is hereby the duty of any sheriff, chief of police, city marshal, constable and any other law enforcement officer who takes custody of a person who has been arrested and who, in the best judgment of the arresting officer, is believed to have committed any offense, except an offense exempted by the rules promulgated by the Oklahoma State Bureau of Investigation pursuant to the provisions of Section 150.1 et seq. of this title, to take or cause to be taken the fingerprint impressions of such person or persons and to forward such fingerprint impressions together with identification information to the Oklahoma State Bureau of Investigation, at its Oklahoma City office. If the sheriff, chief of police, city marshal, or constable has contracted for the custody of prisoners, such contractor shall be required to take the fingerprint impressions of such person.

2. It shall not be the responsibility of, nor shall the sheriff, chief of police, city marshal, constable, other law enforcement officer, or contractor receiving custody of an arrested

person as a prisoner require the arresting officer to take the fingerprint impressions of the arrested person; provided, if the arresting officer is employed by the same law enforcement agency as the sheriff, chief of police, city marshal, or constable receiving custody of such person, the arresting officer may be required to take such impressions.

3. The law enforcement officers shall also forward the prosecution filing report and the disposition report forms to the appropriate prosecuting authority within seventy-two (72) hours. If fingerprint impressions have not been taken at the time of an arrest, the court shall order the fingerprints to be taken by the sheriff at the arraignment, first appearance, or at the time of final adjudication of a defendant whose court attendance has been secured by a summons or citation for any offense, except an offense exempted by the rules promulgated by the Bureau. If a person is in the custody of a law enforcement or correctional agency and a warrant issues or an information is filed alleging the person to have committed an offense other than the offense for which the person is in custody, the custodial law enforcement or correctional agency shall take the fingerprints of such person in connection with the new offense, provided the offense is not exempted by the rules of the Bureau. Any fingerprint impressions and identification information required by this subsection shall be sent to the Bureau within seventy-two (72) hours after taking such fingerprints.

B. In order to maintain a complete criminal history record, the court shall inquire at the time of sentencing whether or not the person has been fingerprinted for the offense upon which the sentence is based and, if not, shall order the fingerprints be taken immediately of such person and those fingerprints shall be sent by the law enforcement agency taking the fingerprint impressions to the Bureau within seventy-two (72) hours after taking the fingerprint impressions.

C. In addition to any other fingerprints which may have been taken of a person in a criminal matter, the Department of Corrections shall take the fingerprints of all prisoners received at the Lexington Reception and Assessment Center or otherwise received into the custody of the Department and shall send copies of such fingerprints together with identification information to the Bureau within seventy-two (72) hours of taking such fingerprints.

D. The Bureau shall, upon receipt of fingerprint impressions and identification information for offenses not exempt by rule of the Bureau, send one copy of the fingerprint impressions to the Federal Bureau of Investigation, at its Washington, D.C., office, and the other copy shall be filed in the Oklahoma State Bureau of Investigation's office. The rules promulgated by the Bureau pursuant to the provision of this act exempting certain offenses from mandatory reporting shall be based upon recommended Federal Bureau of Investigation standards for reporting criminal history information and are not intended to include violators of city or town ordinances and great care shall be exercised to exclude the reporting of criminal history information for such offenses, except when recommended by the Federal Bureau of Investigation standards.

E. The reporting to the Oklahoma State Bureau of Investigation of criminal history information on each person subject to the mandatory reporting requirements of Section 150.1 et seq. of this title shall be mandatory for all law enforcement agencies, courts, judicial officials, district attorneys and correctional administrators participating in criminal matters, whether reported directly or indirectly, manually or by automated system as may be provided by the rules promulgated by the Bureau.

F. Except for offenses exempted by the rules promulgated by the Bureau, the following events shall be reported to the Bureau within seventy-two (72) hours and the Bureau shall have seventy-two (72)

hours after receipt of the report to enter such information into a criminal record data base:

1. An arrest;

2. The release of a person after arrest without the filing of any charge; and

3. A decision of a prosecutor not to commence criminal proceedings or to defer or postpone prosecution.

G. Except for offenses exempted by the rules promulgated by the Bureau, the following events shall be reported to the Bureau within thirty (30) days and the Bureau shall have thirty (30) days after receipt of the report to enter such information into a criminal record data base:

1. A decision by a prosecutor to modify or amend initial charges upon which the arrest was made, including deletions or additions of charges or counts;

2. The presentment of an indictment or the filing of a criminal information or other statement of charges;

3. The dismissal of an indictment or criminal information or any charge specified in such indictment or criminal information;

4. An acquittal, conviction or other court disposition at trial or before, during or following trial, including dispositions resulting from pleas or other agreements;

5. The imposition of a sentence;

6. The commitment to or release from the custody of the Department of Corrections or incarceration in any jail or other correctional facility;

7. The escape from custody of any correctional facility, jail or authority;

8. The commitment to or release from probation or parole;

9. An order of any appellate court;

10. A pardon, reprieve, commutation of sentence or other change in sentence, including a change ordered by the court;

11. A revocation of probation or parole or other change in probation or parole status; and

12. Any other event arising out of or occurring during the course of criminal proceedings or terms of the sentence deemed necessary as provided by the rules established by the Bureau.

The Bureau shall have authority to withhold any entry on a criminal history record when there is reason to believe the entry is based on error or an unlawful order. The Bureau shall in such case take immediate action to clarify or correct the entry.

H. Information reportable under the provisions of this section shall be reportable by the law enforcement officer or person directly responsible for the action, event or decision, unless otherwise provided by rule or agreement. The form and content of information to be reported and methods for reporting information, including fingerprint impressions and other identification information, shall be established by the rules promulgated by the Bureau. The Bureau is hereby directed to establish rules to implement the provisions of Section 150.1 et seq. of this title, provided any rule relating to reporting by courts or judicial officials shall be issued jointly by the Bureau and the Oklahoma Supreme Court.

I. Any person or agency subject to the mandatory reporting of criminal history information or fingerprints as required by the provisions of this act shall take appropriate steps to ensure that appropriate agency officials and employees understand such requirements. Each agency shall establish, and in appropriate cases impose, administrative sanctions for failure of an official or employee to report as provided by law. Refusal or persistent failure of a person or agency to comply with the mandatory reporting requirements of this act may result in the discontinued access to Bureau information or assistance until such agency complies with the law.

J. ~~All~~ Except as provided for in subsection K of this section, all expungement orders which are presented to the Bureau for alterations to criminal history records must be accompanied by a payment of One Hundred Fifty Dollars ($150.00) payable to the Bureau. The subject of the criminal history, whose record is being amended or updated based upon an expungement order, is responsible for such payment. Payment shall be rendered before any expungement order may be processed by the Bureau.

K. Any person whose criminal history record has been ordered sealed by the court because the person was acquitted in the criminal proceeding and a finding was made that the harm to privacy or danger of unwarranted adverse consequences outweighed the public interest in retaining said records shall not be required to pay the Bureau the criminal history records alteration fee of One Hundred Fifty Dollars ($150.00).

SECTION 2. This act shall become effective November 1, 2006.

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