

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1838

By: Williams

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8 COMMITTEE SUBSTITUTE

9 An Act relating to criminal procedure; amending 22
10 O.S. 2011, Section 18, as amended by Section 2,
11 Chapter 183, O.S.L. 2012 (22 O.S. Supp. 2012, Section
12 18), which relates to the expungement of records;
13 modifying certain expungement category; and providing
14 an effective date.

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

16 SECTION 1. AMENDATORY 22 O.S. 2011, Section 18, as
17 amended by Section 2, Chapter 183, O.S.L. 2012 (22 O.S. Supp. 2012,
18 Section 18), is amended to read as follows:

19 Section 18. Persons authorized to file a motion for
20 expungement, as provided herein, must be within one of the following
21 categories:

- 22 1. The person has been acquitted;
- 23 2. The conviction was reversed with instructions to dismiss by
24 an appellate court of competent jurisdiction, or an appellate court

1 of competent jurisdiction reversed the conviction and the district
2 attorney subsequently dismissed the charge;

3 3. The factual innocence of the person was established by the
4 use of deoxyribonucleic acid (DNA) evidence subsequent to
5 conviction, including a person who has been released from prison at
6 the time innocence was established;

7 4. The person has received a full pardon on the basis of a
8 written finding by the Governor of actual innocence for the crime
9 for which the claimant was sentenced;

10 5. The person was arrested and no charges of any type,
11 including charges for an offense different than that for which the
12 person was originally arrested are filed and the statute of
13 limitations has expired or the prosecuting agency has declined to
14 file charges;

15 6. The person was under eighteen (18) years of age at the time
16 the offense was committed and the person has received a full pardon
17 for the offense;

18 7. The person was charged with one or more misdemeanor or
19 felony crimes, all charges have been dismissed, the person has never
20 been convicted of a felony, no misdemeanor or felony charges are
21 pending against the person, and the statute of limitations for
22 refiling the charge or charges has expired ~~or the prosecuting agency~~
23 ~~confirms that the charge or~~ no charges will not be of any kind have

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1 been refiled within forty-five (45) days of the dismissal; provided,
2 ~~however~~ unless the statute of limitations has expired, failure to
3 refile charges within forty-five (45) days of the dismissal shall
4 not constitute a bar to refileing the charge; provided further, this
5 category shall not apply to charges that have been dismissed
6 following the completion of a deferred judgment or delayed sentence;

7 8. The person was charged with a misdemeanor, the charge was
8 dismissed following the successful completion of a deferred judgment
9 or delayed sentence, the person has never been convicted of a
10 misdemeanor or felony, and no misdemeanor or felony charges are
11 pending against the person, and at least two (2) years have passed
12 since the charge was dismissed;

13 9. The person was charged with a nonviolent felony offense, as
14 set forth in Section 571 of Title 57 of the Oklahoma Statutes, the
15 charge was dismissed following the successful completion of a
16 deferred judgment or delayed sentence, the person has never been
17 convicted of a misdemeanor or felony, no misdemeanor or felony
18 charges are pending against the person, and at least ten (10) years
19 have passed since the charge was dismissed;

20 10. The person was convicted of a misdemeanor offense, the
21 person has not been convicted of any other misdemeanor or felony, no
22 felony or misdemeanor charges are pending against the person, and at
23 least ten (10) years have passed since the conviction;

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1 11. The person was convicted of a nonviolent felony offense, as
2 defined in Section 571 of Title 57 of the Oklahoma Statutes, the
3 person has received a full pardon for the offense, the person has
4 not been convicted of any other misdemeanor or felony, no felony or
5 misdemeanor charges are pending against the person, and at least ten
6 (10) years have passed since the conviction; or

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

11 For purposes of this act, "expungement" shall mean the sealing
12 of criminal records. Records expunged pursuant to paragraphs 8, 9,
13 10, 11 and 12 of this section shall be sealed to the public but not
14 to law enforcement agencies for law enforcement purposes. Records
15 expunged pursuant to paragraphs 8, 9, 10 and 11 of this section
16 shall be admissible in any subsequent criminal prosecution to prove
17 the existence of a prior conviction or prior deferred judgment
18 without the necessity of a court order requesting the unsealing of
19 said records.

20 SECTION 2. This act shall become effective November 1, 2013.

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22 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/13/2013 - DO
23 PASS, As Amended.