

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 HOUSE BILL 2609

By: Williams

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5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2011, Sections 18, as amended by Section 2,
9 Chapter 183, O.S.L. 2012 and 19 (22 O.S. Supp. 2013,
10 Section 18), which relate to the expungement of
11 criminal records; modifying certain qualifications;
12 defining term; making certain records kept by the
13 Pardon and Parole Board subject to being sealed;
14 increasing time limitation for notice; providing time
15 limitation for filing objections; and providing an
16 effective date.

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

18 SECTION 1. AMENDATORY 22 O.S. 2011, Section 18, as
19 amended by Section 2, Chapter 183, O.S.L. 2012 (22 O.S. Supp. 2013,
20 Section 18), is amended to read as follows:

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

- 24 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

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 charges will not be refiled; provided,
24 however, this category shall not apply to charges that have been

1 dismissed following the completion of a deferred judgment or delayed
2 sentence;

3 8. The person was charged with a misdemeanor, the charge was
4 dismissed following the successful completion of a deferred judgment
5 or delayed sentence, the person has never been convicted of a
6 misdemeanor or felony, no misdemeanor or felony charges are pending
7 against the person, and at least ~~two (2) years~~ have one (1) year has
8 passed since the charge was dismissed;

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

16 10. The person was convicted of a one or more misdemeanor
17 ~~offense~~ offenses, the person has not been convicted of ~~any other~~
18 ~~misdemeanor or a~~ felony, no felony or misdemeanor charges are
19 pending against the person, and at least ten (10) years have passed
20 since the ~~conviction~~ end of the last misdemeanor sentence;

21 11. The person was convicted of a nonviolent felony offense, as
22 defined in Section 571 of Title 57 of the Oklahoma Statutes, the
23 person has received a full pardon for the offense, the person has
24 not been convicted of any other ~~misdemeanor or~~ felony, the person

1 has not been convicted of a misdemeanor in the last fifteen (15)
2 years, no felony or misdemeanor charges are pending against the
3 person, and at least ten (10) years have passed since the felony
4 conviction; or

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

9 B. For purposes of this act, ~~"expungement":~~

10 1. "Expungement" shall mean the sealing of criminal records;
11 and

12 2. "Conviction" shall mean that incidents arising out of the
13 same transaction or occurrence or series of events closely related
14 in time and location, are to be treated as one conviction.

15 C. Records expunged pursuant to paragraphs 8, 9, 10, 11 and 12
16 of subsection A of this section shall be sealed to the public but
17 not to law enforcement agencies for law enforcement purposes.

18 Records expunged pursuant to paragraphs 8, 9, 10 and 11 of
19 subsection A of this section shall be admissible in any subsequent
20 criminal prosecution to prove the existence of a prior conviction or
21 prior deferred judgment without the necessity of a court order
22 requesting the unsealing of said records. Records expunged pursuant
23 paragraph 11 of subsection A of this section may also include the
24 sealing of Pardon and Parole Board records related to an application

1 for a pardon. Such records shall be sealed to the public but not to
2 the Pardon and Parole Board.

3 SECTION 2. AMENDATORY 22 O.S. 2011, Section 19, is
4 amended to read as follows:

5 Section 19. A. Any person qualified under Section 18 of this
6 title may petition the district court of the district in which the
7 arrest information pertaining to the person is located for the
8 sealing of all or any part of the record, except basic
9 identification information.

10 B. Upon the filing of a petition or entering of a court order,
11 the court shall set a date for a hearing and shall provide ~~thirty~~
12 ~~(30)~~ forty-five (45) days of notice of the hearing to the district
13 attorney, the arresting agency, the Oklahoma State Bureau of
14 Investigation, and any other person or agency whom the court has
15 reason to believe may have relevant information related to the
16 sealing of such record. Objections to the petition shall be filed
17 fifteen (15) days prior to the hearing. The court may continue the
18 hearing or extend the deadline for filing objections for good cause
19 shown upon motion by any party.

20 C. Upon a finding that the harm to privacy of the person in
21 interest or dangers of unwarranted adverse consequences outweigh the
22 public interest in retaining the records, the court may order such
23 records, or any part thereof except basic identification
24 information, to be sealed. If the court finds that neither sealing

1 of the records nor maintaining of the records unsealed by the agency
2 would serve the ends of justice, the court may enter an appropriate
3 order limiting access to such records.

4 Any order entered under this subsection shall specify those
5 agencies to which such order shall apply. Any order entered
6 pursuant to this subsection may be appealed by the petitioner, the
7 district attorney, the arresting agency, or the Oklahoma State
8 Bureau of Investigation to the Oklahoma Supreme Court in accordance
9 with the rules of the Oklahoma Supreme Court. In all such appeals,
10 the Oklahoma State Bureau of Investigation is a necessary party and
11 must be given notice of the appellate proceedings.

12 D. Upon the entry of an order to seal the records, or any part
13 thereof, the subject official actions shall be deemed never to have
14 occurred, and the person in interest and all criminal justice
15 agencies may properly reply, upon any inquiry in the matter, that no
16 such action ever occurred and that no such record exists with
17 respect to such person.

18 E. Inspection of the records included in the order may
19 thereafter be permitted by the court only upon petition by the
20 person in interest who is the subject of such records, the Attorney
21 General, or by the district attorney and only to those persons and
22 for such purposes named in such petition.

23 F. Employers, educational institutions, state and local
24 government agencies, officials, and employees shall not, in any

1 application or interview or otherwise, require an applicant to
2 disclose any information contained in sealed records. An applicant
3 need not, in answer to any question concerning arrest and criminal
4 records provide information that has been sealed, including any
5 reference to or information concerning such sealed information and
6 may state that no such action has ever occurred. Such an
7 application may not be denied solely because of the applicant's
8 refusal to disclose arrest and criminal records information that has
9 been sealed.

10 G. All arrest and criminal records information existing prior
11 to the effective date of this section, except basic identification
12 information, is also subject to sealing in accordance with
13 subsection C of this section.

14 H. Nothing in this section shall be construed to authorize the
15 physical destruction of any criminal justice records.

16 I. For the purposes of this section, sealed materials which are
17 recorded in the same document as unsealed material may be recorded
18 in a separate document, and sealed, then obliterated in the original
19 document.

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

22 K. Any record ordered to be sealed pursuant to Section 1 et
23 seq. of this title, if not unsealed within ten (10) years of the
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1 expungement order, may be obliterated or destroyed at the end of the
2 ten-year period.

3 L. Subsequent to records being sealed as provided herein, the
4 district attorney, the arresting agency, the Oklahoma State Bureau
5 of Investigation, or other interested person or agency may petition
6 the court for an order unsealing said records. Upon filing of a
7 petition the court shall set a date for hearing, which hearing may
8 be closed at the court's discretion, and shall provide thirty (30)
9 days' notice to all interested parties. If, upon hearing, the court
10 determines there has been a change of conditions or that there is a
11 compelling reason to unseal the records, the court may order all or
12 a portion of the records unsealed.

13 M. Nothing herein shall prohibit the introduction of evidence
14 regarding actions sealed pursuant to the provisions of this section
15 at any hearing or trial for purposes of impeaching the credibility
16 of a witness or as evidence of character testimony pursuant to
17 Section 2608 of Title 12 of the Oklahoma Statutes.

18 SECTION 3. This act shall become effective November 1, 2014.

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20 54-2-8383 GRS 12/31/13

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