ENGROSSED SENATE AMENDMENTS
TO
ENGROSSED HOUSE
BILL NO. 2397

By: Dunlap and Sherrer of the House

and

Sykes of the Senate

An Act relating to criminal procedure; amending 22 O.S. 2011, Sections 18, as last amended by Section 2, Chapter 397, O.S.L. 2015 and 19, as amended by Section 1, Chapter 178, O.S.L. 2015 (22 O.S. Supp. 2015, Sections 18 and 19), which relate to criminal arrest record expungement qualifications and procedures; adding and modifying expungement categories; deleting and replacing certain designation; and providing an effective date.

AMENDMENT NO. 1. Page 5, line 2, after the word "record", insert the words "involving actions brought by and against the State of Oklahoma".

AMENDMENT NO. 2. Page 9, line 17½, insert a new Section 3 to read

"SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 210.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

All DNA samples, records and identifiable information generated pursuant to the provisions of Section 210 of Title 22 of the Oklahoma Statutes that are required to be automatically expunged under the provisions of that section shall be inadmissible in any future prosecution of that person."

AMENDMENT NO. 3. Page 1, Restore the title to read

"An Act relating to criminal procedure; amending 22 O.S. 2011, Sections 18, as last amended by Section 2, Chapter 397, O.S.L. 2015 and 19, as amended by Section 1, Chapter 178, O.S.L. 2015 (22 O.S. Supp. 2015, Sections 18 and 19), which relate to expungement and sealing of records; adding and modifying expungement categories; modifying definition; conforming statutory references; replacing certain designation; providing for inadmissibility of certain samples and records; providing for codification; and providing an effective date."

Passed the Senate the 20th day of April, 2016.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2016.

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Presiding Officer of the House of Representatives

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An Act relating to criminal procedure; amending 22 O.S. 2011, Sections 18, as last amended by Section 2, Chapter 397, O.S.L. 2015 and 19, as amended by Section 1, Chapter 178, O.S.L. 2015 (22 O.S. Supp. 2015, Sections 18 and 19), which relate to criminal arrest record expungement qualifications and procedures; adding and modifying expungement categories; deleting and replacing certain designation; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 18, as last amended by Section 2, Chapter 397, O.S.L. 2015 (22 O.S. Supp. 2015, Section 18), is amended to read as follows:

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

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

of competent jurisdiction reversed the conviction and the ~~district attorney~~ prosecuting agency subsequently dismissed the charge;

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

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

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

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

7. The person was charged with one or more misdemeanor or felony crimes, all charges have been dismissed, the person has never been convicted of a felony, no misdemeanor or felony charges are pending against the person, and the statute of limitations for refiling the charge or charges has expired or the prosecuting agency confirms that the charge or charges will not be refiled; provided, however, this category shall not apply to charges that have been

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

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

9. The person was charged with a nonviolent felony offense, not listed in Section 571 of Title 57 of the Oklahoma Statutes, the charge was dismissed following the successful completion of a deferred judgment or delayed sentence, the person has never been convicted of a ~~misdemeanor or~~ felony, no misdemeanor or felony charges are pending against the person, and at least ~~ten (10)~~ five (5) years have passed since the charge was dismissed;

10. The person was convicted of a misdemeanor offense, the person was sentenced to a fine of less than Five Hundred One Dollars ($501.00) without a term of imprisonment or a suspended sentence, the fine has been paid or satisfied by time served in lieu of the fine, the person has not been convicted of a felony, and no felony or misdemeanor charges are pending against the person;

11. The person was convicted of a misdemeanor offense, the person was sentenced to a term of imprisonment or a suspended sentence, the person has not been convicted of a felony, no felony

or misdemeanor charges are pending against the person, and at least ~~ten (10)~~ five (5) years have passed since the end of the last misdemeanor sentence;

~~11.~~ 12. The person was convicted of a nonviolent felony offense, not listed in Section 571 of Title 57 of the Oklahoma Statutes, the person has received a full pardon for the offense, the person has not been convicted of any other felony, the person has not been convicted of a separate misdemeanor in the last fifteen (15) years, no felony or misdemeanor charges are pending against the person, and at least ten (10) years have passed since the felony conviction; ~~or~~

~~12.~~ 13. The person was convicted of not more than two nonviolent felony offenses, not listed in Section 571 of Title 57 of the Oklahoma Statutes, the person has received a full pardon for both of the nonviolent felony offenses, no felony or misdemeanor charges are pending against the person, and at least twenty (20) years have passed since the last misdemeanor or felony conviction; or

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

B. For purposes of this act, "expungement" shall mean the sealing of criminal records as well as any public civil record arising from the same arrest, transaction or occurrence.

C. For purposes of seeking an expungement under the provisions of paragraph 10 ~~or~~, 11, 12 or 13 of subsection A of this section, offenses arising out of the same transaction or occurrence shall be treated as one conviction and offense.

D. Records expunged pursuant to paragraphs 8, 9, 10, 11 ~~and~~, 12, 13 and 14 of subsection A of this section shall be sealed to the public but not to law enforcement agencies for law enforcement purposes. Records expunged pursuant to paragraphs 8, 9, 10 ~~and~~, 11, 12 and 13 of subsection A of this section shall be admissible in any subsequent criminal prosecution to prove the existence of a prior conviction or prior deferred judgment without the necessity of a court order requesting the unsealing of the records. Records expunged pursuant to paragraph 4, 6 ~~or 11~~, 12 or 13 of subsection A of this section may also include the sealing of Pardon and Parole Board records related to an application for a pardon. Such records shall be sealed to the public but not to the Pardon and Parole Board.

SECTION 2. AMENDATORY 22 O.S. 2011, Section 19, as amended by Section 1, Chapter 178, O.S.L. 2015 (22 O.S. Supp. 2015, Section 19), is amended to read as follows:

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

B. Upon the filing of a petition or entering of a court order, the court shall set a date for a hearing and shall provide thirty (30) days of notice of the hearing to the ~~district attorney~~ prosecuting agency, the arresting agency, 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 such record.

C. Upon a finding that the harm to privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court may order such records, or any part thereof except basic identification information, to be sealed. If the court finds that neither sealing of the records nor maintaining of the records unsealed by the agency would serve the ends of justice, the court may enter an appropriate order limiting access to such records.

Any order entered under this subsection shall specify those agencies to which such order shall apply. Any order entered pursuant to this subsection may be appealed by the petitioner, the ~~district attorney~~ prosecuting agency, the arresting agency, or the

Oklahoma State Bureau of Investigation to the Oklahoma Supreme Court in accordance with the rules of the Oklahoma Supreme Court. In all such appeals, the Oklahoma State Bureau of Investigation is a necessary party and must be given notice of the appellate proceedings.

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

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

F. 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 records. An applicant need not, in answer to any question concerning arrest and criminal 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. Such an

application may not be denied solely because of the refusal of the applicant to disclose arrest and criminal records information that has been sealed.

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

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

I. 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.

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

K. Any record ordered to be sealed pursuant to this section, if not unsealed within ten (10) years of the expungement order, may be obliterated or destroyed at the end of the ten-year period.

L. Subsequent to records being sealed as provided herein, the ~~district attorney~~ prosecuting agency, the arresting agency, the Oklahoma State Bureau of Investigation, or other interested person or agency may petition the court for an order unsealing said records. Upon filing of a petition the court shall set a date for

hearing, which hearing may be closed at the discretion of the court, and shall provide thirty (30) days of notice to all interested parties. If, upon hearing, the court determines there has been a change of conditions or that there is a compelling reason to unseal the records, the court may order all or a portion of the records unsealed.

M. 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.

N. If a person qualifies for an expungement under the provisions of paragraph 3 of subsection A of Section 18 of this title and said petition for expungement is granted by the court, the court shall order the reimbursement of all filing fees and court costs incurred by the petitioner as a result of filing the expungement request.

SECTION 3. This act shall become effective November 1, 2016.

Passed the House of Representatives the 1st day of March, 2016.

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Presiding Officer of the House
of Representatives

Passed the Senate the ___ day of _____, 2016.

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Presiding Officer of the Senate