

1 ENGROSSED HOUSE
2 BILL NO. 1263

By: Walker of the House

and

Dahm of the Senate

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7 An Act relating to criminal record expungements;
8 amending 22 O.S. 2011, Section 19, which relates to
9 procedures for filing expungements; providing for the
10 reimbursement of filing fees and costs under certain
11 circumstances; updating language; amending 74 O.S.
2011, Section 150.12, which relates to reporting
fingerprint and criminal history information;
providing exception to certain fee; and providing an
effective date.

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

15 SECTION 1. AMENDATORY 22 O.S. 2011, Section 19, is
16 amended to read as follows:

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

22 B. Upon the filing of a petition or entering of a court order,
23 the court shall set a date for a hearing and shall provide thirty
24 (30) days of notice of the hearing to the district attorney, the

1 arresting agency, the Oklahoma State Bureau of Investigation, and
2 any other person or agency whom the court has reason to believe may
3 have relevant information related to the sealing of such record.

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

12 Any order entered under this subsection shall specify those
13 agencies to which such order shall apply. Any order entered
14 pursuant to this subsection may be appealed by the petitioner, the
15 district attorney, the arresting agency, or the Oklahoma State
16 Bureau of Investigation to the Oklahoma Supreme Court in accordance
17 with the rules of the Oklahoma Supreme Court. In all such appeals,
18 the Oklahoma State Bureau of Investigation is a necessary party and
19 must be given notice of the appellate proceedings.

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

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

8 F. Employers, educational institutions, state and local
9 government agencies, officials, and employees shall not, in any
10 application or interview or otherwise, require an applicant to
11 disclose any information contained in sealed records. An applicant
12 need not, in answer to any question concerning arrest and criminal
13 records provide information that has been sealed, including any
14 reference to or information concerning such sealed information and
15 may state that no such action has ever occurred. Such an
16 application may not be denied solely because of the ~~applicant's~~
17 refusal of the applicant to disclose arrest and criminal records
18 information that has been sealed.

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

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

1 I. For the purposes of this section, sealed materials which are
2 recorded in the same document as unsealed material may be recorded
3 in a separate document, and sealed, then obliterated in the original
4 document.

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

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

12 L. Subsequent to records being sealed as provided herein, the
13 district attorney, the arresting agency, the Oklahoma State Bureau
14 of Investigation, or other interested person or agency may petition
15 the court for an order unsealing said records. Upon filing of a
16 petition the court shall set a date for hearing, which hearing may
17 be closed at the ~~court's~~ discretion of the court, and shall provide
18 thirty (30) ~~days'~~ days of notice to all interested parties. If,
19 upon hearing, the court determines there has been a change of
20 conditions or that there is a compelling reason to unseal the
21 records, the court may order all or a portion of the records
22 unsealed.

23 M. Nothing herein shall prohibit the introduction of evidence
24 regarding actions sealed pursuant to the provisions of this section

1 at any hearing or trial for purposes of impeaching the credibility
2 of a witness or as evidence of character testimony pursuant to
3 Section 2608 of Title 12 of the Oklahoma Statutes.

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

10 SECTION 2. AMENDATORY 74 O.S. 2011, Section 150.12, is
11 amended to read as follows:

12 Section 150.12 A. 1. It is hereby the duty of any sheriff,
13 chief of police, city marshal, constable and any other law
14 enforcement officer who takes custody of a person who has been
15 arrested and who, in the best judgment of the arresting officer, is
16 believed to have committed any offense, except an offense exempted
17 by the rules promulgated by the Oklahoma State Bureau of
18 Investigation pursuant to the provisions of Section 150.1 et seq. of
19 this title, to take or cause to be taken the fingerprint impressions
20 of such person or persons and to forward such fingerprint
21 impressions together with identification information to the Oklahoma
22 State Bureau of Investigation, at its Oklahoma City office. In the
23 case of any sheriff, chief of police, city marshal, constable, or
24 any other law enforcement officer equipped with a live-scan device

1 designed for the electronic capture and transmission of fingerprint
2 images approved by the Oklahoma State Bureau of Investigation,
3 fingerprint images may instead be taken and transmitted to the
4 Bureau electronically. If the sheriff, chief of police, city
5 marshal, or constable has contracted for the custody of prisoners,
6 such contractor shall be required to take the fingerprint
7 impressions of such person.

8 2. It shall not be the responsibility of, nor shall the
9 sheriff, chief of police, city marshal, constable, other law
10 enforcement officer, or contractor receiving custody of an arrested
11 person as a prisoner require the arresting officer to take the
12 fingerprint impressions of the arrested person; provided, if the
13 arresting officer is employed by the same law enforcement agency as
14 the sheriff, chief of police, city marshal, or constable receiving
15 custody of such person, the arresting officer may be required to
16 take such impressions.

17 3. The law enforcement officers shall also forward the
18 prosecution filing report and the disposition report forms to the
19 appropriate prosecuting authority within seventy-two (72) hours. If
20 fingerprint impressions have not been taken at the time of an
21 arrest, the court shall order the fingerprints to be taken by the
22 sheriff at the arraignment, first appearance, or at the time of
23 final adjudication of a defendant whose court attendance has been
24 secured by a summons or citation for any offense, except an offense

1 exempted by the rules promulgated by the Bureau. If a person is in
2 the custody of a law enforcement or correctional agency and a
3 warrant issues or an information is filed alleging the person to
4 have committed an offense other than the offense for which the
5 person is in custody, the custodial law enforcement or correctional
6 agency shall take the fingerprints of such person in connection with
7 the new offense, provided the offense is not exempted by the rules
8 of the Bureau. Any fingerprint impressions and identification
9 information required by this subsection shall be sent to the Bureau
10 within seventy-two (72) hours after taking such fingerprints.

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

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

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

16 E. The reporting to the Oklahoma State Bureau of Investigation
17 of criminal history information on each person subject to the
18 mandatory reporting requirements of Section 150.1 et seq. of this
19 title shall be mandatory for all law enforcement agencies, courts,
20 judicial officials, district attorneys and correctional
21 administrators participating in criminal matters, whether reported
22 directly or indirectly, manually or by automated system as may be
23 provided by the rules promulgated by the Bureau.
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1 F. Except for offenses exempted by the rules promulgated by the
2 Bureau, the following events shall be reported to the Bureau within
3 seventy-two (72) hours and the Bureau shall have seventy-two (72)
4 hours after receipt of the report to enter such information into a
5 criminal record data base:

6 1. An arrest;

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

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

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

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

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

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

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

4 5. The imposition of a sentence;

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

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

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

11 9. An order of any appellate court;

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

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

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

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

23 H. Information reportable under the provisions of this section
24 shall be reportable by the law enforcement officer or person

1 directly responsible for the action, event or decision, unless
2 otherwise provided by rule or agreement. The form and content of
3 information to be reported and methods for reporting information,
4 including fingerprint impressions and other identification
5 information, shall be established by the rules promulgated by the
6 Bureau. The Bureau is hereby directed to establish rules to
7 implement the provisions of Section 150.1 et seq. of this title,
8 provided any rule relating to reporting by courts or judicial
9 officials shall be issued jointly by the Bureau and the Oklahoma
10 Supreme Court.

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

22 J. All expungement orders which are presented to the Bureau for
23 alterations to criminal history records must be accompanied by a
24 payment of One Hundred Fifty Dollars (\$150.00) payable to the

1 Bureau. The subject of the criminal history, whose record is being
2 amended or updated based upon an expungement order, is responsible
3 for such payment. Payment shall be rendered before any expungement
4 order may be processed by the Bureau. Payment of the fee shall be
5 waived if the subject of the criminal history record has been
6 granted an expungement under the provisions of paragraph 3 of
7 subsection A of Section 18 of Title 22 of the Oklahoma Statutes.

8 SECTION 3. This act shall become effective November 1, 2015.

9 Passed the House of Representatives the 2nd day of March, 2015.

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12 Presiding Officer of the House
of Representatives

13 Passed the Senate the ___ day of _____, 2015.

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17 Presiding Officer of the Senate